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भारत का राजपत्र
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सं. 32] नई दिल्ली, अगस्त 11—अगस्त 17, 2024, शनिवार/ श्रावण 20—श्रावण 26, 1946
No. 32] NEW DELHI, AUGUST 11—AUGUST 17, 2024, SATURDAY/ SHRAVANA 20– SHRAVANA 26, 1946

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 6 अगस्त, 2024

का.आ. 1548.—भारतीय लघु उद्योग विकास बैंक अधिनियम, 1989, वर्ष 2000 में यथा संशोधित की धारा (6) (1) (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री भूषण कुमार सिन्हा के स्थान पर श्री मनोज मुट्टत्तिल अय्यप्पन, संयुक्त सचिव वित्तीय सेवाएं विभाग को तत्काल प्रभाव से और अगले आदेशों तक, भारतीय लघु उद्योग विकास बैंक (सिडबी) के बोर्ड में निदेशक के पद पर नामित करती है।

[फा. सं. एफटी-1/12/2022-आईएफ-II]

अनिल कुमार, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 6th August, 2024

S.O. 1548.—In exercise of the powers conferred by Section (6) (1) (c) of the Small Industries Development Bank of India Act, 1989 as amended in the year 2000, the Central Government hereby nominates Shri Manoj Muttathil Ayyappan, Joint Secretary, Department of Financial Services as a Director on the Board of Small Industries Development Bank of India (SIDBI) with immediate effect and until further orders vice Shri Bhushan Kumar Sinha.

[F. No. FT-1/12/2022-IF-II]

ANIL KUMAR, Under Secy.

नई दिल्ली, 12 अगस्त, 2024

का.आ. 1549.—बीमा विनियामक और विकास प्राधिकरण अधिनियम, 1999 (1999 का 41) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, प्रूडेंट कारपोरेट एडवाइजरी सर्विसेज लिमिटेड में स्वतंत्र निदेशक और गिरनार इंश्योरेंस ब्रोकर्स प्रा. लि. में गैर-कार्यकारी निदेशक तथा स्वतंत्र परामर्शदाता, श्री दीपक सूद को पद का कार्यभार ग्रहण करने की तारीख से 62 वर्ष की आयु प्राप्त करने तक अथवा अगले आदेशों तक, जो भी पहले हो, चार लाख रुपए प्रतिमाह (आवास और कार की सुविधा के बिना) के समेकित वेतन पैकेज पर भारतीय बीमा विनियामक और विकास प्राधिकरण (इरडाई) में पूर्णकालिक सदस्य (गैर-जीवन) नियुक्त करती है।

[फा. सं. आर-12011/01/2024-बीमा-I]

अब्दुल गुफरान, अवर सचिव

New Delhi, the 12th August, 2024

S.O. 1549.—In exercise of the powers conferred by section 4 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Central Government hereby appoints Shri Deepak Sood, Independent Director, Prudent Corporate Advisory Services Limited & Non-Executive Director, Girnar Insurance Brokers Pvt. Ltd. & Independent Consultant as Whole-Time Member (Non-Life) in the Insurance Regulatory and Development Authority of India (IRDAI), on a consolidated pay package of four lakh rupees per month (without facility of house and car), with effect from the date of assumption of charge of the post till he attains the age of 62 years or until further orders, whichever is earlier.

[F. No. R-12011/01/2024-Ins.I]

ABDUL GUFRAN, Under Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 26 जुलाई, 2024

का.आ. 1550.—केन्द्र सरकार, एतद् द्वारा, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (वर्ष 1946 की अधिनियम सं. 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए गुजरात राज्य सरकार की अधिसूचना सं.जीजी/3/2024/एसबी-IV/सीबीआई/102023/जीओआई/13, दिनांक 02.01.2024, गृह विभाग, सचिवालय, गांधीनगर और शुद्धिपत्र अधिसूचना सं. जीजी/63/2024/एसबी-IV/सीबीआई/102023/जीओआई/13, दिनांक 11.06.2024, गृह विभाग, सचिवालय, गांधीनगर के माध्यम से प्रदान की गई सम्मति से, सीबीआई, अंतर्राष्ट्रीय संचालन प्रभाग, नई दिल्ली के मामला सं. आरसी2312023एस0003, दिनांक 09.10.2023 में सूचना प्रौद्योगिकी अधिनियम, 2000 की धारा 66डी के तहत किए गए अपराधों और उससे जुड़े या उससे संबद्ध अन्य

अपराध(धों) व किसी दुष्प्रयास, दुष्प्रेरणा एवं/अथवा षड्यंत्र तथा ऐसे अपराध(धों) से जुड़े एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार कार्योत्तर प्रभाव से दिनांक 09.10.2023 से समस्त गुजरात राज्य में करती है।

[फा. सं. 228/05/2024-एवीडी-II]

सत्यम श्रीवास्तव, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(DEPARTMENT OF PERSONNEL AND TRAINING)

New Delhi, the 26th July, 2024

S.O. 1550.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State of Gujarat, issued vide Notification No. GG/3/2024/SB-IV/CBI/102023/GOI/13 dated 02.01.2024, Home Department, Sachivalaya, Gandhinagar and corrigendum Notification No. GG/63/2024/SB-IV/CBI/102023/GOI/13 dated 11.06.2024 Home Department, Sachivalaya, Gandhinagar hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole State of Gujarat for investigation of offences u/s 66D of Information Technology Act, 2000 and other offence(s), attempt, abetments and conspiracies in relation to or in connection with case No. RC2312023S0003 dated 09.10.2023 of CBI, International Operations Division, New Delhi and any other offence or offences committed in the course of the same transaction arising out of the same facts ex-post-facto w.e.f 09.10.2023.

[F. No. 228/05/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 8 अगस्त, 2024

का.आ. 1551.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II चंण्डीगढ़ के पंचाट (17/2022) प्रकाशित करती है।

[सं. एल-12012/04/2021-आई आर (बी-I)]

सलोनी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 8th August, 2024

S.O. 1551—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.17/2022) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. II Chandigarh as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/04/2021–IR(B-1)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT: SH. KAMAL KANT, PRESIDING OFFICER.

ID No.17/2022
Registered on:-27.03.2023
General Secretary, Sh. Ashish Mishra,
United Forum of We Bankers,
New MIG-53, Hemant Vihar,
Barra-2, Kanpur(U.P.)-208027.

……. ..Workmen/Union

Versus

1. Chief General Manager, State Bank of India, Local Head Office, Sector 17-A, Chandigarh-160017.
2. Regional Manager, State Bank of India, Regional Business Office, SBI Building, Sherawala Gate, Patiala(Punjab)-147001.
3. Branch Manager, State Bank of India, Branch Office, Bhadson, Tehsil-Patiala(Punjab)-147202.

.. Respondents/Management

AWARD

Passed on :-22.04.2024

Central Government vide Notification No.L-12012/04/2021-IR(B-I) Dated 15.12.2021, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of State Bank of India in transferring the workman Shri Jagjeet Singh from Bhadson to Amargarh w.e.f. 25.06.2020 is in violation of the Shashtri Award and the bipartite settlement and is illegal and unjustified? If yes, what relief the workman is entitled to?**

1. Today i.e. 22.04.2024 the case was fixed for filing claim statement by the workman. On scrutiny of the order sheets, it is revealed that the workman has not come present on 17.08.2023, 18.12.2023 and today also i.e. 22.04.2024 continuously. Several dates for filing claim statement have been fixed by the Tribunal, which denotes that workman is neither serious nor interested in disposal of the case on merit.
2. Since the workman has neither put his appearance for long nor he has filed any claim statement and the workman has left the case unattended for a long time without any intimation, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference for the non-prosecution of the workmen-union.
3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding Officer

नई दिल्ली, 8 अगस्त, 2024

का.आ. 1552.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एचडीएफसी बैंक लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. **II** चंण्डीगढ़ के पंचाट (320/2013) प्रकाशित करती है।

[सं. एल-12012/102/2013-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 8th August, 2024

S.O. 1552—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.320/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. II Chandigarh as shown in the Annexure, in the industrial dispute between the management of HDFC Bank Ltd and their workmen.

[No. L-12012/102/2013–IR(B-1)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT: SH. KAMAL KANT, PRESIDING OFFICER.

ID No. 320/2013
Registered on:-7.2.2014
Sh. Rakesh Manro, S/o Sh. Kharaiti Lal Manro,
R/o H. No. 394, Ward No. 20, Near Veternary Hospital,
Jaswant Singh Kohli Street, Peer Khana Road,
Khanna, District Ludhiana.

……..Workman

Versus

1. HDFC Bank Ltd., Chandigarh Road, Samrala, through its Branch Manager.
2. HDFC Bank Ltd., Mall Road, Ludhiana, through Its Zonal Manager.
3. HDFC Bank Ltd., Human Resources Division, HDFC Bank House, 2nd Floor, Senapati Bapat Marg, Lower Parel, Mumbai-400013, through its Chairman-cum-Managing Director.

.. …Respondents/Management

AWARD

Passed on :-20.05.2024

Central Government vide Notification No. L-12012/102/2013-IR(B-I) Dated 30.12.2013, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of termination the services of Sh. Rakesh Manro w.e.f. 06.11.2008 by the management of HDFC Bank Ltd. is legal, just and valid? If not, to what relief the workman is entitled to and from which date?**

1. The case was fixed for remaining evidence of workman. On scrutiny of the order sheets, it is revealed that the workman has not come present on 26.09.2023, 23.11.2023, 14.03.2023 and today also i.e. 20.05.2024 continuously. Several dates for arguments have been fixed by the Tribunal, which denotes that workman is neither serious nor interested in disposal of the case on merit.
2. Since the workman has neither put his appearance for long nor he has led any evidence to prove its case against the mangement and has left the case unattended for a long time without any intimation, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference for the non-prosecution of workman.
3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding Officer

नई दिल्ली, 8 अगस्त, 2024

का.आ. 1553.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंद्रप्रस्थ गैस लिमिटेड; मेसर्स डीबी इंटरप्राइजेज के प्रबंधतंत्र के संबद्ध नियोजकों और श्री संजय कौशिक के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्लीए पंचाट (रिफरेन्स न.- 313/2017) को

जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 08.08.2024 को प्राप्त हुआ था ।

[सं. जेड-16025/04/2024- आईआर(एम)-90]

दिलीप कुमार, अवर सचिव

New Delhi, the 8th August, 2024

S.O. 1553—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 313/2017) of the Central Government Industrial Tribunal cum Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to Indraprastha Gas Limited; M/s Deebee Enterprises and Shri Sanjay Kaushik which was received along with soft copy of the award by the Central Government on 08.08.2024.

[No. Z-16025/04/2024-IR(M)-90]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1

ROOM NO.207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

ID No. 313/2017

Shri Sanjay Kaushik S/o Shri K.K. Pandey,

R/o Home No. 159, Vill- Prehladpur Banger,

Bankerwali Gali, Delhi-110042.

Claimant…

Versus

1. Managing director,
   IGL Bhawan, Plot No.4,
   Community Centre, Sector-9,
   R.K. Puram, New Delhi
2. Sh. G.C. Shah (Col. Rtd.),
   Contractor/Proprietor/Operator/Director,
   M/s Deebee Enterprises, Plot No. 7,
   Sector No.7, Dwarka, New Delhi-75.
3. Sh. Prabhakar Gupta, Market Maneger,
   MGF, Sector No. 22, Pocket No.7,
   Near Vill: Begumpur, CNG Pump On Line,
   Rohini, Delhi-110085

Management…

AWARD

1. This is an application Under Section 2A of the I.D. Act whereby, the applicant made prayer that his termination from the service on 02.05.2017 by the management which be declare illegal and unjustified and he be reinstated with full back wages, it is the case of the applicant/workman that he has been working with the management. He has not been provided any legal facilities. He was illegally terminated form his service on 02.05.2017 without any rhyme or reason and without conducted any domestic enquiry by the management. He has initiated the conciliation proceeding but, no result. Hence, he had filed the present claim petition. Management no.1 & 2 also filed rebuttal written statement.

2. Management No.3 is not appearing since long therefore they are proceeded ex-parte. Thereafter, rejoinder was filed and issues were framed. Case was listed for claimant evidence on 18.09.2019.

3. The claimant filed an application for withdraw. Hence, in these circumstances this tribunal has no option except to pass the no disputant award. No disputant award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 29.07.2024

नई दिल्ली, 8 अगस्त, 2024

का.आ. 1554.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार माइंस एन.सी.एल., निगाही प्रोजेक्ट के प्रबंधतंत्र के संबद्ध नियोजकों और श्री नागेंद्र सिंह के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालयए जबलपुर, पंचाट (रिफरेन्स न. 01/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 08.08.2024 को प्राप्त हुआ था।

[सं. जेड-16025/04/2024- आईआर(एम)-91]

दिलीप कुमार, अवर सचिव

New Delhi, the 8th August, 2024

S.O. 1554.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 01/2015) of the Central Government Industrial Tribunal cum Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the employers in relation to Mines NCL, Nigahi Project and Shri Nagendra Singh which was received along with soft copy of the award by the Central Government on 08.08.2024.

[No. Z-16025/04/2024-IR(M)-91]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/01/2015
Present: P.K.Srivastava
H.J.S..(Retd)

Shri Nagendra Singh
S/o. Sh. Rangdev Singh
R/o. H. No. B/152, Sector-3, Nigahi Colony
Nigahi Project, District- Singrauli (M.P.)

Workman

Versus

Chief General Manager/General Manager
Mines N.C.L., Nigahi Project, Nigahi
District – Singrauli (M.P.)

Management

(J U D G E M E N T)

(Passed on this 4th day of July-2024)

The workman has filed this petition U/S. 2-A (2 & 3) of the Industrial Disputes Act, hereinafter, referred to by the word 'Act' seeking the relief of his reinstatement setting aside order of his discharge from service, passed by the Disciplinary Authority on 13.07.2011 confirmed by the Appellate Authority vide his order dated 12.11.2011 and further affirmed by Chief Managing Director refusing to review the said orders vide his order dated 30.10.2012. Also seeking relief of consideration of one of his dependants for compassionate appointment and grant of pension, gratuity and other dues to him.

According to the workman, while in service of management he got mentally sick on 16.03.2003. Since them he has been under treatment of doctors and informed the management about his illness, treatment and absence. He was issued a charge sheet by management with following charges under Certified Standing Orders applicable :-

26.22 Doing any willful and deliberate act which is subversive of discipline or which may be detrimental to the interest of the company.

26.24 Habitual late attendance or habitual absence from duty without sufficient cause.

26.30 Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave.

The substance of the charge was that the workman had been absenting himself from duty since 16.03.2003 and accordingly charge sheet dated 14/22.01.09 was issued. No explanation was furnished by the workman. Vide letter dated 25/27.03.2004, another charge sheet was issued for the same charges. The workman was allowed to resume his duty vide order of management dated 17.08.2006 but he did not return back on duty. Again, a letter dated 11.07.2007 was issued directing him to join his duty but he did not join and informed vide his letter dated 18.07.2007 that he was under treatment in Nehru Hospital (run by company) and on getting fitness certificate, he would join. Vide letter dated 07/08.09.2007 he was directed to report to Dr. Sourav Kumar at NSC Jayant and was also directed vide letter dated 23.05.2008 to report on duty but he sent a letter to management dated 29.05.2008 stating that his mental condition was not good and he was under treatment in Nehru Hospital also that after getting fitness certificate, he would resume his duties. He was again directed by management vide its letter dated 08.07.2008 to join his duties but he never joined his job nor did he send any intimation to management regarding his absence.

A departmental inquiry was conducted against the workman the Inquiry Officer submitted her inquiry report dated 17.05.2011 holding the charge of misconduct, as mentioned above, proved. The Disciplinary Authority, after finding his reply to the show cause notice issued with copy of inquiry report not sufficient, imposed the punishment of discharge of the workman from service.

In his petition, the workman challenged the legality of the inquiry, also challenged the finding of the Inquiry Officer holding him guilty of misconduct as well the punishment with a case that inquiry was not conducted according to rules and natural justice, finding of the Inquiry Officers are perverse and the punishment awarded is not according to law.

Rebutting the case of applicant workman, management has taken a case that the workman has been a serial offender. He was issued various charge sheets in the past for the same misconduct but was imposed minor punishment. He was issued charge sheet on 27.03.2004 for remaining absent from duty w.e.f. 16.03.2003. A departmental inquiry was conducted and after charge was found proved, he was awarded punishment of reduction of rank vide order dated 17.08.2006.

According to management, he kept himself absenting from duty for a long period and was issued a letter on 11.07.2007 directing him to report on duty within 7 days. He did not report for duty nor for medical examination, hence, charge sheet dated 22.01.2009 was issued. The workman did not furnish any satisfactory reply to the charge sheet. He was issued another charge sheet on 04.12.2009 for the charge of continuous absence for a long period w.e.f. 18.03.2003 as mentioned in charge sheet dated 22.01.2009. An inquiry was conducted with respect to the charge in which the workman participated the Enquiry Officer submitted her report holding the workman guilty for the charges of misconduct (as mentioned above).

The workman was served, according to management, a copy of inquiry report and a show cause notice while he not be punished for the charges and after finding his reply not sufficient the punishment of his discharge from service was awarded. An Appeal and Review Petition was rightly dismissed.

Following **issues** were framed on the basis of pleadings :-

1. **Whether the departmental inquiry conducted against the workman is just proper and legal ?**
2. **Whether the charges leveled against the workman are proved from evidence recorded in departmental inquiry ?**
3. **If not, to what relief the workman is entitled to, if the punishment is not proper ?**

In **evidence**, the workman his affidavit as his examination in chief. He was cross examined by management he filed and proved documents Ex. W/1 to W/26 which are documents related to charge sheet, reply, inquiry papers, papers filed by workman in his defense during the inquiry and order of management regarding punishment, to be referred to as and when required.

Management filed affidavit of the Inquiry Officer and filed as well proved documents Ex. M/1 to M/34, which are mainly the papers which have been filed and proved by the workman. They shall be referred to as and when required.

Issue No.-1 was decided as preliminary issue holding the departmental inquiry just, legal and proper. This order is part of the Award.

No further evidence was adduced any of the parties on remaining issues.

I have heard **arguments** of Mr. Pranay Choubey learned Counsel for workman and learned Senior Advocate Mr. Anoop Nair, assisted by Advocate Shubham Nanepag. Workman side has filed written argument also which is part of record. I have gone through the record as well as the written arguments.

Issue No.-2 :-

Learned Counsel for workman has submitted that the charge of absence without sufficient cause has wrongly been recorded proved by the Inquiry Officer. He further submits that no doubt the workman was absent from duty but not without sufficient cause because there was evidence before the Inquiry Officer adduced by the workman during the inquiry and since the beginning that he had been suffering from mental disease which was diagnosed as Obsessive Compulsive disorder and he has been under treatment for this disease/disorder in hospital maintained by the management itself.

Learned Counsel has referred to a judgment of Hon'ble the Apex Court in the case of **Krishnakant B. Parmar Vs. Union of India (2012) 3 SCC 178** in this respect. The following portion of the judgment is being reproduced as under-

This extract is taken from Krushnakant B. Parmar v. Union of India, (2012) 3 SCC 178 : (2012) 1 SCC (L&S) 609 : 2012 SCC OnLine SC 162 at page 181

"16. *In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.*

17. *If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.*

18. *In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.*

19. *In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was wilful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.*

20. *The question relating to jurisdiction of the court in judicial review in a departmental proceeding fell for consideration before this Court in M.V. Bijlani v. Union of India [(2006) 5 SCC 88 : 2006 SCC (L&S) 919] wherein this Court held: (SCC p. 95, para 25)*

> *"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."*

21. *In the present case, the disciplinary authority failed to prove that the absence from duty was wilful, no such finding has been given by the inquiry officer or the appellate authority. Though the appellant had taken a specific defence that he was prevented from attending duty by Shri P. Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3-10-1995 addressed to Shri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office of telephone calls dated 29-9-1995, etc. but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the inquiry officer held the appellant guilty.*

22. *Mr P. Venkateswarlu, DCIO, Palanpur, who was the complainant and against whom the appellant alleged bias refused to appear before the inquiry officer in spite of service of summons. Two other witnesses, Shri Jivrani and Shri L.N. Thakkar made no statement against the appellant, and one of them stated that he had no knowledge about the absence of the appellant. Ignoring the aforesaid evidence, on the basis of surmises and conjectures, the inquiry officer held the charge proved.*

23. *Though the aforesaid facts were noticed by the appellate authority but ignoring such facts giving reference of extraneous allegations which were not the part of the charge, it dismissed the appeal with the following uncalled for observation:*

"The appellant even avoided the basic training required for the job and asked JAD, Ahmedabad to send all the training papers for his training at IB Training School, Shivpuri (Madhya Pradesh) to his residence at Ahmedabad. 'An untrained officer is of no worth to the department'."

24. *In the result, the appeal is allowed. The impugned orders of dismissal passed by the disciplinary authority, affirmed by the appellate authority; the Central Administrative Tribunal and the High Court are set aside. The appellant stands reinstated."*

The Learned Senior Counsel for management has rebutted the argument from the side of workman with a submission that evidence showing the conduct of the workman by not reporting himself before the Doctor Sourav Kumar for examination without reason and the fact that he used not to appear himself before the Doctor for treatment or prescribing medicine by Doctor proved that he was guilty for the misconduct of wilfully absenting himself for a long time without any sufficient cause.

As it comes out from perusal of inquiry report that the Inquiry Officer has taken two facts, which according to her, prove the charges. They are, **firstly,** the workman did not report to Dr. Sourav Kumar as directed by management vide its letter dated 07/08.09.2007 and **Secondly,** he had not visited the concerned Doctor in person only repetition of medicine was recorded in his medical card. After going through inquiry papers, it comes out that the medical card of the workman, issued by management, shows that the workman has been under treatment of Doctor in Hospital maintained by the management. The case of workman is that he was first advised by Doctor/Competent Officer vide letter dated 08/09.03.2005 to get treatment in Nehru Hospital and thereafter he remained under treatment of Doctor of Nehru Hospital. The documents in form of his medical card which contains the details of prescriptions advised, were not found disputed or not genuine during the inquiry. It is further the case of workman that he did inform the management about his treatment on various dates which are 18.07.2007, 30.05.2007, 29.01.2009, 24.12.2009 and 12.05.2005. His this case/stand also has not being held incorrect by the Inquiry Officer.

On perusal of medical card, copy filed and proved during the inquiry, it comes out that in fact the workman had been present before the Doctor on various dates and on some dates, someone on his behalf went to the Doctor, informed the Doctor about the condition and medicines were prescribed by the Doctor. There is nothing unusual in this conduct. In the case where treatment is of long duration, it does happen that on some occasions, someone consults the Doctor on behalf of the patient, informs the condition of the patient and the Doctor prescribes the treatment/medicines.

Learned Counsel for workman has submitted that a report of Dr. Sourav Kumar was filed by management representative and his statement was recorded wherein he stated that Dr. Sourav Kumar and Dr. A.K. Mishra have informed in response to letter of the management representative dated 05.04.2011 in which Dr. Mishra made an endorsement that the patient was referred to Psychiatrist for expert opinion and Dr. Sourav Kumar made an endorsement on the letter of management representative, above referred that as per his record the patient was never seen by him on 10.02.2007, someone else came with a prescription of medicine. He was advised to continue medicine and asked to come with patient. Again on 09.03.2007 and 14.03.2007, the person who came on behalf of patient, attended the Doctor without patient and was advised to continue medicine but come with patient.

As submitted by learned Counsel for workman, this statement of management representative in which he is said to have stated before the Inquiry Officer regarding getting endorsement of these Doctors, specially Dr. Sourav Kumar on his letter, sent by him was added later on because **Firstly**, it does not find mention in the inquiry proceedings dated 03.03.2011 and **Secondly**, it does not contain the date on which it was recorded by the Inquiry Officer. This proceeding does not contain the signature of the workman or his representative which shows that it was prepared in the absence of the workman or his representative. He further submits that it has been the case of the workman that he had visited Dr. Sourav Kumar in person after he received letter of management directing him to visit Dr. Sourav Kumar in person.

The stand that the workman did visit Dr. Sourav Kumar has been taken for the first time in his reply to the show cause notice, issued by the Disciplinary Authority. The perusal of inquiry proceedings shows that he did not take this stand during inquiry. The perusal of this statement of management representative which is the core evidence according to the Inquiry Officer to substantiate the charge, does not contain the signature of the workman, whereas in other inquiry proceedings the presence of the workman gets reflected from the proceedings itself. Hence, there is substance in the argument of learned Counsel for workman that this statement of management witness who is the management representative himself was not recorded during the inquiry rather it may be a subsequent addition and also it was recorded in absence of the workman. In my considered view it was incumbent on the Inquiry Officer to record this statement atleast in presence of the workman.

This fact is also to be noticed that the letters by the management representative were written to the Doctors on 05.04.2011 as it is mentioned in these two letters. The endorsement has been made by the Doctors S.K. Mishra &

Sourav Kumar and has been signed on 07.04.2011 as it is clear from two letters marked MD/2 & MD/4 during the inquiry proceedings. It can be inferred that these letters would have been filed with the so called statement of management witness who is the management representative/ presenting officer in the inquiry only on 07.04.2011 or at any date after 07.04.2011. It also comes out that the latest inquiry proceedings recorded are of 03.03.2011. In every date when the inquiry has been proceeded, next date has been fixed for hearing and proceedings have been signed by all concerned. There is no mention in the proceeding dated 03.03.2011 that any further date was fixed in the inquiry after 03.03.2011. This fact also leads to the inference that in fact the statement of the Management Representative/Presenting Officer and letters to the Doctors with their endorsements, as mentioned above, have been attached back and behind of the workman without his knowledge.

As it has been mentioned earlier, the Inquiry Officer has taken this statement of management representative and letters to the Doctors as basis of her finding with respect to proof of the charge of misconduct. In the light of the facts and circumstances mentioned above, since this statement and these letters as well the endorsement of Doctors mentioned above cannot be treated as a part of inquiry, the finding of the Inquiry Officer which is based on these endorsements on letters is nothing but perverse and is held accordingly.

In the light of above discussion, finding of the Inquiry Officer with respect to the charge of habitual unauthorized absent without sufficient cause is held perverse and this charge is held not proved against the workman.

Issue No.-2 is answered accordingly. .

Issue No.-3 :-

In the light of above finding on issue no.-2, the punishment of discharge of the workman cannot stand in law and is set aside.

But there are still some facts which require to be noticed. The fact of unauthorized absence due to his medical condition & treatment is proved and is admitted by the workman also. Only the fact that his absence was not without sufficient cause is held not proved. The question arises as to can an employer be put under obligation to have a workman on his rolls inspite of the fact of his absence for an indefinite period when it is found that the workman is under medical condition, receiving treatment for long duration which is not certain. The answer to this will be 'No'. The employer is within his rights to disengage such a workman after reasonable period or period provided in the service rules/standing orders. Thus, in the case in hand also discharge of the workman by management on the ground of his prolonged illness and treatment with no certainty of recovery to enable the workman to resume his duties cannot be said to be unjustified. Keeping in view this fact and the circumstances of the case in hand, the discharge of the workman by way of punishment deserves to be converted into discharge on the ground of prolonged illness and being medically unfit.

As regards the prayer of the workman that his case be considered for benefits admissible under Para 9.3.0, 9.4.0 & 9.5.0 regarding employment/payment of monthly monetary compensation to the dependent, as provided in NCWA VIII since his discharge is due to medical unfitness, the management is held under obligation to consider it and decide the claim within three months from the date such a claim is put by the workman before management.

Issue No.-3 is answered accordingly.

AWARD

Converting order of discharge of the workman by management as a punishment into discharge due to being medically unfit for the reason of under prolonged treatment with little hope to resume duty in near future, he is held entitled to be considered by management for benefits provided in the Para 9.3.0, 9.4.0 & 9.5.0 regarding employment/payment of monthly monetary compensation to the dependent, as provided in NCWA VIII, within three months from the date he puts his such claim before management. No order as to costs. Petition stands disposed accordingly.

DATE:- 04/07/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 8 अगस्त, 2024

का.आ. 1555.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लाइफ इन्सुरेंस कॉर्पोरेशन ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और मोहम्मद अयाज खान के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर, पंचाट (रिफरेन्स न.- 10/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 08.08.2024 को प्राप्त हुआ था।

[सं. जेड-16025/04/2024- आईआर(एम)-92]

दिलीप कुमार, अवर सचिव

New Delhi, the 8th August, 2024

S.O. 1555.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 10/2018) of the Central Government Industrial Tribunal cum Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the employers in relation to Life Insurance Corporation of India and Mohammad Ayaz Khan which was received along with soft copy of the award by the Central Government on 08.08.2024.

[No. Z-16025/04/2024-IR(M)-92]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/10/2018

Present: P.K.Srivastava
H.J.S..(Retd)

Mohd. Ayaj Khan
S/o. Sh. Yaar Mohammad Khan
Skilled Labour (Ex-Typist cum Computer Operator), Life Insurance Corporation of India Rewa, R/o. Akharghat, Near Water Tank Rewa (M.P.)

Workman

Versus

1. **Life Insurance Corporation of India Through its Divisional Manager Division Satna, Near Krishna Nagar Bus Stand, Satna (M.P.)**
2. **Chief Manager Life Insurance Corporation of India Branch No.2. Sirmaur Chowk, Khanna Tower, Rewa (M.P.)**

Management

JUDGEMENT

(Passed on this 09th day of July-2024)

This case has proceeded against the management on the basis of a petition, filed by the applicant Workman against his termination by management.

The case of the Workman, as a stated by him in his petition is mainly that he had been working with the management on the post of type cum computer operator since May 25, 2003 his services were terminated illegally by management without any notice or compensation, which is against section 25 F of the Industrial Disputes Act 1947, hereinafter referred to by the word 'Act'. Also, it has been alleged that by engaging him on temporary basis from 2003 to 2017, and not granting him status of permanent and regular employee, the management has adopted unfair labour practice. According to the workman, he first raised a dispute before the concerned labour Commissioner on December 7th, 2017. After the dispute remained pending for 45 days and would not be resolved, he filed this petition under section 2(A)(2&3) of the Act. The workman has prayed that declaring the termination of his services by the management, he be held entitled to be reinstated with all back wages and benefits.

The case of management in brief is that the Workman was not appointed by management against sanctioned vacancy adopting recruitment process. He was simply a casual employee, employed on as and when required basis and was not entitled to any protection under the 'Act'. The management has thus requested that the petition be dismissed.

The applicant Workman did not appear after filing of the petition and did not file any evidence. The management also did not file any evidence.

At the time of argument also, none turned up for the workman. Mr. Aditya Singh appeared for management and submitted his arguments.

The initial burden to prove his case is on the workman. The Workman has not been discharged this burden. Hence holding the claim of the Workman not proved, the petition deserves to be dismissed and is dismissed accordingly. No order as to cost.

DATE: 09/07/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 8 अगस्त, 2024

का.आ. 1556.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केंद्रीय लोक निर्माण विभाग के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं II दिल्ली के पंचाट (121/2022) प्रकाशित करती है।

[सं. एल-12012/01/2024- आई आर (बी-I)-203]
सलोनी, उप निदेशक

New Delhi, the 8th August, 2024

S.O. 1556.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.121/2022) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. - II Delhi as shown in the Annexure, in the industrial dispute between the management of Central Public Work Department and their workmen.

[No. L-12025/01/2024– IR(B-1)-203]

SALONI, Dy. Director

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 121/2022

Sh. Sushil Kumar, S/o Sh. Jaiveer Singh Ram,
Through- The President Sh. Hukum Chand, CPWD
Karamchari Union, Babu Lal Ji Complex, Shop No-04,
Gurgaon Road, Opposite Bus Stand, Gurgaon Haryana-122001.

VERSUS

1. The Director General,
Central Public Work Department,
Nirman Bhawan, New Delhi-110011.

2. **The Director of Personal, P.W.D.,**
12th Floor, MSO Building, P.W.D. Head Office
I.T.O., New Delhi-110002.

AWARD

This is an application of 33A of the I.D Act filed by workman stating that the managements are threatening to terminate his service while his case along with the other workmen for regularization was pending before this tribunal bearing ID no.- 02/2019. After receiving the notice from the conciliation officer the above said management started mis-behaving with the above mentioned workman and threatening him to terminate from his services. As such he had made prayer to direct the management to not to terminate his service till the pendency of the dispute.

On 19.09.2022, issues have been framed that is given below:-

1. Whether the proceeding is maintainable.
2. Whether the service of the complainant Sushil Kumar was terminated by the management CPWD during the pendency of an Industrial Dispute between him and the management.

3. Whether the act of the management amounts to change in service condition.

4. To what relief the complainant is entitled to.

Claimant was asked to examine the witness. However, inspite of providing number of opportunities nobody appeared on behalf of claimant to substantiate his claim. It means that claimant is not interested to pursuing his claim. Hence, his application U/s 33 A stands dismissed. File is consigned to record room.

Date: 01.05.2024

ATUL KUMAR GARG, Presiding Officer.

नई दिल्ली, 8 अगस्त, 2024

का.आ. 1557.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केंद्रीय लोक निर्माण विभाग के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. **II दिल्ली** के पंचाट (218/2021) प्रकाशित करती है।

[सं. एल-12025/01/2024-आई आर (बी-I)-202]
सलोनी, उप निदेशक

New Delhi, the 8th August, 2024

S.O. 1557.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.218/2021) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. -II Delhi as shown in the Annexure, in the industrial dispute between the management of Central Public Work Department and their workmen.

[No. L-12025/01/2024– IR(B-1) -202]
SALONI, Dy. Director

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 218/2021

Sh. Narayan Singh & 02 others.,
Through- The President Sh. Hukum Chand,
CPWD Karamchari Union, Babu Lal Ji Complex,
Shop No-04, Gurgaon Road, Opposite Bus Stand,
Gurgaon Haryana-122001.

VERSUS

1. The Director General,
Central Public Work Department,
Nirman Bhawan, New Delhi-110001.

2. The Special Director General,
Electrical Co-ordination Circle, East Block,
R.K. Puram, New Delhi-110066.

3. The Engineer in Chief,
P.W.D. 12th Floor, MSO Building (P.W.D. H.Q.)
I.P. Estate, New Delhi-110002.

AWARD

This is an application of U/S 2A of the Industrial Disputes Act (here in after referred as an Act). Claimant AR had filed the claim statement on behalf of 03 workmen who are members of the union and whose service particulars are as under:-

S. No.	NAME	DATE OF JOINING	POST	PRESENTLY WORKING
1.	Sh. Narain Singh S/o. Mohan Singh	24/09/1991	ML Driver	South Road Div-2
2.	Sh. Shanta Prasad S/o. Rudra Prasad		ML Driver	CBMD 321
3.	Sh. Vijay Chand S/o. Nanah Chand	13/01/1989	ML Driver	PWD-EMD M-251 (PWD H.Q.)

It is the case of the workmen that they have been working against the vacant posts of Driver since their introduction into the employment of the management. Workmen are continuously discharging their services with the management. They have unblemished record of services to their credit. Workmen aforesaid are supposed to be regularized since their respective initial date of joining but the management had never regularized them till now. That the job against which workmen aforesaid have been working are of a permanent and regular in nature but the management are treating them as a monthly paid/muster roll workers. The workmen have been meted out with hostile discrimination as junior to them have been regularized in service in proper pay scale and allowances since their initial dates of joining, but the workmen have been completely ignored in this matter. Demand notice was also served upon the management by speed post vide communication date 20.11.2014, which was duly received in their office but no reply had been received and it is presumed that the demand notice has been rejected. They have filed the claim with the prayer of regularizing their services.

Vide letter dated 27.02.2023, management-1 & 2 had been proceeded ex-parte. Management-3 had appeared and filed the W.S. and denied the averment made in the claim. He submits that claim of the claimant be liable to be dismissed.

I have gone through the record of the case. Case has been filed U/s 2A of the Industrial Disputes Act. Section 2A of the Act has been inserted in the I.D Act in the year 1965. It gives the individual workman the right to approach directly to the tribunal or Labour Court against their illegal discharge, dismissal, retrenchment or termination. There is a rider about this remedy available to the workman. A condition was imposed by Sub-section of 2 of Section 2A that workman first approach to the conciliation officer of the appropriate government by moving an application to this effect and forty-five days have been passed therein. Further a limitation was also there that the application shall be entertained by the Labour Court or by the tribunal if the same has been made within three year of his discharge, dismissal, retrenchment or otherwise termination of his service.

Herein, in the present case the claimant services have not been discharged. They seek the regularization of their services from this tribunal which is not possible without reference made to this court by appropriate government. Hence, the claim filed by the petitioner stands dismissed. Award is accordingly passed. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. File is consigned to record room.

Date: 02.05.2024

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 8 अगस्त, 2024

का.आ. 1558.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केंद्रीय लोक निर्माण विभाग के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. **II दिल्ली** के पंचाट (02/2019) प्रकाशित करती है।

[सं. एल -12025/01/2024- आई आर (बी-I)-204]

सलोनी, उप निदेशक

New Delhi, the 8th August, 2024

S.O. 1558.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.02/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. - II Delhi as shown in the Annexure, in the industrial dispute between the management of Central Public Work Department and their workmen.

[No. L-12025/01/2024– IR(B-I) -204]
SALONI, Dy. Director

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 02/2019

Sh. Inder Kumar, S/o Sh. Sunder, and Others.,
Through- CPWD Karamchari Union, Babu Lal Ji Complex, Shop No-04,
Gurgaon Road, Opposite Bus Stand, Gurgaon Haryana-122006.

VERSUS

1. **Director General, C.P.W.D.,**
Nirman Bhawan, New Delhi-110001.

2. **Director of Personal P.W.D.,**
11th Floor, MSO Building, P.W.D. Head Office
I.T.O., New Delhi-110002.

AWARD

The appropriate Government **Sh. Rajendra Joshi**, Deputy Director, Government of India, Ministry of Labour/ Shram Mantralya has sent the reference refer dated 02.09.2020 to this tribunal for adjudication in the following words:

> ***"Whether the demand of the CPWD Karamchari Union to the Management of Director General, CPWD, Nirman Bhawan, New Delhi and Director (Personnel) PWD New Delhi for regularizing the services of 18 workers as per details in annexure is justified and legal? If yes, what relief the workers & CPWD Karamchari Union are entitled to and what directions are necessary in the case?"***

After receiving the above said reference notices were sent to both the parties. Both the parties appeared and claimant AR had filed the claim statement on behalf of 18 workmen who are members of the union and whose service particulars are as under:-

S. No.	NAME	DATE OF JOINING	JOINING DIVISION OFFICE	PRESENT DIVISION OFFICE	SUB-DIVISION OFFICE
1.	Inder Singh S/o Sunder	01.04.1995	Shahadara central division	S.R.D (P.W.D.)	E.IN.C. Pr. C.E.
2.	Khumo Bahadur S/o Shahveer	01.01.1993	E.D-XI	F-22 (P.W.D.)	Delhi Secretariat
3.	Shushil Kumar S/o Jail Veer Singh	17.03.1995	School Building Project Mandel	M-214 (P.W.D.)	M-214
4.	Govind Singh S/o Laxman Singh	10.02.1996	Punjabi Bagh Project	F-24 (P.W.D.)	E.N.C. Office
5.	Inder Singh S/o Laxman Singh	04.06.1998	Punjabi Bagh Project	M-321	M-321
6.	Sanjeev S/o Gulshan Sharma	12.06.1995		S.R.D.	M-21
7.	Rajesh Kumar S/o Gulshan Sharma	01.12.1999	Delhi College		
8.	Jitender Kumar S/o Dudh Nath Singh	02.02.2002	P.W.D. Circle No. II	M-113 S.W.R.I	C.E.M.Z.-1 (S)

S. No.	NAME	DATE OF JOINING	JOINING DIVISION OFFICE	PRESENT DIVISION OFFICE	SUB-DIVISION OFFICE
9.	Shami S/o Mithu Ram	16.06.2007	D.C. College Project	M-333	C.E.M.Z. III (N)
10.	Jai Prakash Dubey S/o Dev Narayan Dubey	31.07.2006		S.R.D. (E)	P.W.D. Office
11.	Hasan S/o Maksud	31.01.2008	M-25	S.R.D. (E)	E.IN.C P.W.D
12.	Anil Mishra S/o Ram Vishal Mishra	31.12.2008	E.IN.C	M-113 (P.W.D.)	E.IN. C
13.	Prabhu S/o Ram Shankar	01.11.2012	P.W.D. M-14	E.D. (P.W.D.)	E.D.U. (M) P.W.D.
14.	Prem Thapa S/o Dil Bahadur Thapa		M-441	M-441	M-441
15.	Chote Lal S/o Sukhdev	13.07.1992	E.D.-II P.W.D	Shiksha Mandel-II	Shiksha Mandel-II, Dwarka
16.	Dil Bahadur S/o K.B. Shakar	18.09.2009	P.W.D. B.2.Z	E.D.	P.W.D. Office
17.	Madan Lal S/o Kamal Singh	01.08.1966	C.E.M.Z-4		C.E.M.Z-2 (E)
18.	Rajesh Kumar S/o Vasant Lal	01.11.2012	M-25	B-141 P.W.D.	C.M.P P.R.O

It is the case of the workmen that they have been working against the vacant posts of Driver since their introduction into the employment of the management. Workmen are continuously discharging their services with the management. They have unblemished record of services to their credit. Workmen aforesaid are supposed to be regularized since their respective initial date of joining but the management had never regularized them till now. That the job against which the workmen aforesaid have been working are of a permanent and regular in nature but the management are treating them as a monthly paid/muster roll workers. The workmen have been meted out with hostile discrimination as junior to them have been regularized in service in proper pay scale and allowances since their initial dates of joining, but the workmen have been completely ignored in this matter. Demand notice was also served upon the management by speed post which was duly received in their office but no reply had been received and it is presumed that the demand notice has been rejected. They have filed the claim with the prayer of regularizing their services with the managements.

Management-1 never appeared i.e. CPWD. Management-2 has appeared and filed his respective W.S and denied the averment made in the statement of claim.

After completion the pleadings, following issues have been framed vide order dated 17.12.2019 i.e.:-

1. Whether the proceeding is maintainable.
2. If the workman as per the list received along with the reference are entitled to regularization of their service with CPWD.
3. Whether there exist employer employee relationship between the management and the workmen.
4. To what other relief the workmen are entitled to.

Vide order dated 25.04.2022, the matter was listed for evidence of the workmen.

Claimants are asked to prove their case. However, despite providing a number of opportunities, claimants have not turned up to prove their claim. As the claimants have not turned up for proving their case, their claim stand dismissed. Award is passed accordingly. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. File is consigned to record room.

Date: 01.05.2024

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 8 अगस्त, 2024

का.आ. 1559.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केंद्रीय लोक निर्माण विभाग के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. **II दिल्ली** के पंचाट (219/2021) प्रकाशित करती है।

[सं. एल -12025/01/2024- आई आर (बी-I)-205]
सलोनी, उप निदेशक

New Delhi, the 8th August, 2024

S.O. 1559.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.219/2021) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. -II Delhi as shown in the Annexure, in the industrial dispute between the management of Central Public Work Department and their workmen.

[No. L-12025/01/2024– IR(B-1)-205]
SALONI, Dy. Director

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 219/2021

Sh. Sant Lal, S/o Sh. Ram Ashrey,
Through- The President Sh. Hukum Chand,
CPWD Karamchari Union, Babu Lal Ji Complex,
Shop No.-04, Gurgaon Road, Opposite Bus Stand,
Gurgaon Haryana-122001.

Versus

1. The Director General,
Central Public Work Department,
Nirman Bhawan, New Delhi-110001.

2. **Dy. Director (Horticulture), CPWD,**
1st Floor, C-Wing, Room No.-104
Container Corporation of India Ltd.
Inland Content Depot, Tughlakabad, New Delhi-110020.

3. **Til Ltd.**
Plot No-11, Site-IV, Shibabad Industrial Area,
Uttar Pradesh-201005.

AWARD

This is an application of **U/S 2A of the Industrial Disputes Act (here in after referred as an Act).** Claimant had stated in their claim statement that he had joined into the employment of CPWD w.e.f. 18.01.1983 as a Mali. His wages was fixed and was revised from time to time under the Minimum Wages Act by the appropriate government while their counterparts has been getting more wages who were regular with the respondent, but he was not given. Job against which the workman aforesaid have been working is of permanent and regular in nature. Not providing the Equal pay for Equal work is unfair practice, hence he made prayer that an award be passed in favor of the workman holding therein that the workman concerned are entitled to be regularized.

In the present case, reply has been filed by the CPWD. Issues have been framed. But this tribunal, while going through the record had come to the fact that the present case have been filed U/s 2A of the Act while his service have not been terminated yet.

U/S 2A of the I.D Act which has been inserted 1967 has given the option/liberty to individual workman to approach directly before this tribunal against their termination, retrenchment, dismissal without being referred by the appropriate Government for deciding the disputes.

In the present case failure report has been obtained by the claimant and he has filed the claim petition. Before we proceed further, text of the Section 2A is required to be reproduced which are given under:

[2A. Dismissal, etc. of an individual workman to be deemed to be an industrial dispute

[(1)] *Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]*

[(2)] *Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*

[(3)] The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)].

From the perusal of the above said section, it makes clear that individual workman has given the rights/option to approach directly before this tribunal against discharge, dismissal & retrenchment, however, further rider have been made by adding Sub-section 2 that first the workman has to approach to the conciliation officer for conciliation and the forty-five days have been passed therein. Sub-clause-3 further impose the condition that the claim has to be filed with three year from the date of the dismissal.

From the fact of this case, it is revealed that the service of the workman has not been terminated nor he was retrenched, therefore the claim U/s 2A is not maintainable. Hence claim of the claimant stands dismissed. Award is passed accordingly. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. File is consigned to record room.

Date 21st May, 2024

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 9 अगस्त, 2024

का.आ. 1560.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनबीसीसी इंडिया लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. **II दिल्ली** के पंचाट (208/2019, 194/2019) प्रकाशित करती है।

[सं. एल-12025/01/2024-आई आर (बी-I)-209]

सलोनी, उप निदेशक

New Delhi, the 9th August, 2024

S.O. 1560.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 208/2019, 194/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.* - II *Delhi* as shown in the Annexure, in the industrial dispute between the management of NBCC India Ltd and their workmen.

[No. L-12025/01/2024– IR(B-1)-209]

SALONI, Dy. Director

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 208/2019

Sh. Amrit Lal, S/o Sh. Chote Lal,

R/o- 2024, Kotla Pilanji Mubarakpur, New Delhi-110003.

Through- All India General Mazdoor Trade Union,

Office-170, Bal Mukund-Khand Giri Nagar, Kalkaji,

New Delhi-110019.

I.D. No. 194/2019

Sh. Jagmohan, S/o Late Sh. Ganashi,

R/o- L-1/1504/12, Sangam Vihar, New Delhi-110080.

Through- All India General Mazdoor Trade Union,

Office-170, Bal Mukund-Khand Giri Nagar, Kalkaji,

New Delhi-110019.

Versus

1. **NBCC India Ltd.**

   NBCC Bhawan, Lodhi Road, New Delhi-110003.

2. **Veer Prosguer Soilder & Housekeepers Pvt. Ltd.,**

   B-133, 3rd Floor, DDA Shed, Okhla Phase-I,

   New Delhi-110020.

AWARD

By this Composite order, I shall dispose of these two applications of U/S 2A of the Industrial Disputes Act (here in after referred as an Act) filed by the different claimants against the same respondents. Because of having the common respondents and same cause of action, these cases are taken together for disposal. Claims of the workmen are that they have been serving with management-1 through management-2 at the post of security guards at the last drawn salary of Rs. 8,500/- and Rs. 6,000/- per month with four hours overtime of 3,000/- per month respectively. They were deprived ESI and PF facilities by the chief manager and contractor. When the workmen demanded for legal facilities, the Chief manager and contractor deprived the workmen of their salary earned from 01.03.2017 to 31.05.2017 and 01.03.2018 to 25.04.2018. Without any rhyme or reason and without informing and giving notice, they were terminated from their job on 01.06.2017 and 26.04.2018. Claimants through their union, submitted written demand letter to the management on 12.03.2018 and 23.05.2018 through A.D/Speed Post, but no response to the demand letter of workmen has been received nor they be taken on job and no amount was paid to them. After the illegal termination, workmen are jobless and despite their tireless efforts, they have not got a job. They had tried to take back their services but failed. They had sent the complaint to the labour commissioner, but, it has yielded no result. Hence, they have filed the present claims.

Notices of the claims have been served to both the parties. W.S has been filed by the respondent-1, and he denied the averment made in their claims. He has submitted that claims are liable to be dismissed. Management-2 had been proceeded ex-parte vide order dated 11.11.2021.

After completion the pleadings, following issues have been framed vide order dated 01.12.2023 i.e.:-

1. Whether the proceedings are maintainable.
2. Whether there exists employer and employee relationship between the management-1 and the claimants.
3. Whether the claimants were working in the premises of the management-1 through the contractor management-2.
4. Whether the services of the claimants were illegally terminated by the managements.
5. To what relief the claimants are entitled to.

Now, the matters are listed for workman evidence. Today, the AR of the workman submits that he has no contact with the workmen since long; as such he is unable to file the affidavit of evidence of workmen.

In absence of the Claimants. Claims of the claimants stand dismissed. Awards are accordingly passed. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. File is consigned to record room.

Date 15th May, 2024

ATUL KUMAR GARG, Presiding Office

नई दिल्ली, 9 अगस्त, 2024

का.आ. 1561.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोटक महिंद्रा बैंक लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. **II दिल्ली** के पंचाट (122/2022) प्रकाशित करती है।

[सं. एल-12025/01/2024- आई आर (बी-I)-207]

सलोनी, उप निदेशक

New Delhi, the 9th August, 2024

S.O. 1561.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.122/2022*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.* - II *Delhi* as shown in the Annexure, in the industrial dispute between the management of Kotak Mahindra Bank Ltd and their workmen.

[No. L-12025/01/2024– IR(B-1)-207]

SALONI, Dy. Director

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 122/2022

Sh. Raja Babu,

C/o- 253. Pratap Khand,

Jhilmil Colony, Delhi-110095.

VERSUS

1. **The Chairman/Director,**

   Kotak Mahindra Bank Ltd.

   Narain Manzil, G-Floor, Shop No. G-01 to G-05,

   01st Floor, Shop No- 1001 to 1007, Barakhamba Road,

   New Delhi-110001.

2. **Avon Facility Management Services Ltd.**

   /1-1, 1st Floor, Mohan Co-operative Industrial Estate,

   Near Badarpur Border, New Delhi-110044.

AWARD

This is an application of U/S 2A of the Industrial Disputes Act (here in after referred as an Act). Claimant had stated in his claim statement that he was appointed by the management-1 on 01.07.2019 at the post of Security Guard, casual labour on muster roll. After going through the entire selection process, he was selected for his service. It would be pertain to mention here that though the job for which he was employed was permanent nature, but, despite that he was taken in job on contract basis malafidely. Workman is continuously discharging their duties since

01.07.2019 but he was malafidely shown as employee on through contract basis and management has taking work regularly. Workman is continuously discharging his service in office of **KOTAK MAHINDRA BANK LTD-DELHI** and issue a various letter through management that workman service are required to regularized on permanent basis and he also entitled to his salary in proper pay scale and allowances. Management-1 & 2 was not followed to contract labour (Regulation and Abolition) Act 1970. He is entitled to be treated as regular and permanent employee from the initial date of his joining but the management has not taken any step to regularized his service in proper pay scale and allowance. On 14.06.2020 management-1 has orally stopped his entry in ATM without any information, without any reason, without releasing bonus and overtime dues. Workman has been rendered jobless and he is employed from the date of illegal termination. He has gone to the conciliation officer, but, no result was yielded. Hence he has filed the claim.

Vide letter dated 28.04.2022, management-1 had been proceeded ex-parte. Management-2 had appeared and filed the W.S. and denied the averment made in the claim. It is his case that workman had been working with the managment-1 for a short period of 5 months i.e. from 31.10.2019 to 31.03.2020 and thereafter he left to report for duty. He was working with the management for a fixed period/contract from 31.10.2019 to 31.03.2020 which was not formally extended due to lockdown declared by the Ministry of Home Affairs, Government of India but as the banking services were coming under the category of essential services, he was allowed to continue his working after but for the reasons best known to the claimant, he started absenting from his services and did not report for duty. He submits that claim of the claimant be liable to be dismissed.

After completion the pleadings, following issues have been framed vide order dated 27.09.2022 i.e.:-

1. Whether the proceeding is maintainable in view of the earlier settlement arrived between him and the management before the Labour Commissioner.
2. Whether the service of the claimant was illegally terminated.
3. To what relief the claimant is entitled to and from which date.

Claimant is asked to prove his case. However, despite providing a number of opportunities, claimant has not turned up to prove his claim. As the claimant has not turned up for proving his case, his claim stands dismissed. Award is passed accordingly. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. File is consigned to record room.

Date: 01.05.2024

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 9 अगस्त, 2024

का.आ. 1562.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोटक महिंद्रा बैंक लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. **II दिल्ली** के पंचाट (175/2021) प्रकाशित करती है।

[सं. एल-12025/01/2024- आई आर (बी-I)-206]

सलोनी, उप निदेशक

New Delhi, the 9th August, 2024

S.O. 1562.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.175/2021*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. -* II *Delhi* as shown in the Annexure, in the industrial dispute between the management of Kotak Mahindra Bank Ltd and their workmen.

[No. L-12025/01/2024– IR(B-1)-206]

SALONI, Dy. Director

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 175/2021

Sh. Badri Prasad Mishra, S/o Sh. Ram Ji Mishra,

R/o- RC-109, Dharam Vihar, Khoda Colony,

Near Tiwari Medical Store, Ghaziabad, Uttar Pradesh-201309.

Versus

1. **The Managing Director,**

   Kotak Mahindra Bank Ltd.

   Registered Office At: 27-BKC, C-27,

   G-Block, Bandra Kurla Complex Mumbai-400051.

   Also At : Plot No. 07 Sector-125, Near Amity University,

   Noida-201313.

2. **Avon Solutions & Logistics Pvt. Ltd.,**

   Registered Office At: No.01, Deepak Complex,

   3rd Floor, Bharathi Nagar, 4th Street, T Nagar, Chennai-600017.

   Also At : Roots Tower, Near-V3S Mail, 7th Floor 711,

   Laxmi Nagar, Delhi-110092.

AWARD

This is an application U/S 2A of the **Industrial Disputes Act (here in after referred as an Act).** It is the case of the claimant that he was appointed as "Mailroom Staff (Runner)" in the management on 01.09.2016 and had been working with management at the last drawn salary of the workman of Rs. 13,350/- per month. The management no.-1 is the principal employer and the management no.-2 is the contractor of the workman. Workman performed his duties with hard labour and due diligence and to the entire satisfaction of the management and he never gave a single chance of any type of complaint to the management during his service period. Workman used to work for management for more than the time scheduled for his duty and even on Sundays and holidays. The salary of the workman was less than the minimum wage Act determined by the Delhi Government under the Minimum Wages Act 1948. Workman was aware of his legal rights and wanted his full wages as determined under the Act. On 22.07.2019 the workman received a charge-sheet cum show-cause notice from the management. Management with the person of his choice as Enquiry Officer namely **Puneet Saini**, started enquiry into the charges leveled against the workman but no intimation was given to the workman regarding the said enquiry. The inquiry report was also submitted by the inquiry officer on 09.11.2019 which held the workman liable of creating chaotic situation for company's business prospects and not maintaining of discipline and based on the same inquiry report the services of the workman were dismissed w.e.f 22, October 2019 when in reality no such situation at work place ever arose and because the workman was aware of his rights and was asking for the same from the management he had to pay for the same in the way of his dismissal from his duty. The enquiry conducted by the management is liable to be set aside/quashed on the grounds that the workman was not provided with the documents relied upon the management in enquiry and as such the workman was not given any opportunity to rebut the same. Neither notice of enquiry was served upon the workman nor was notice of enquiry ever received by the workman. The proceedings of the enquiry were not taken place in the presence of the workman. The workman was not provided any opportunity to cross-examine the witnesses produced by the management in the enquiry. Management has produced the witness without supplying any list of witness before starting the evidence by the management. No proceeding/order sheets pertaining to enquiry were ever supplied to the workman. The enquiry conducted by the management is against the principles of natural justice and further enquiry report submitted by the enquiry officer is perverse and therefore the enquiry allegedly been conducted by the management is liable to be set aside/vitiated. Management had taken revenge from the workman only falsely accused him and terminated the services of the workman based on these false accusations. That after termination of services, the workman visited the office of the management time and again for his reinstatement, but all in vain. The above said acts of the management are highly illegal, unjust, improper, arbitrary, & unconstitutional against the provision of I.D Act. He has gone to the conciliation officer, but, no result was yielded. Hence he has filed the claim. He is unemployed since from his illegal termination by the management i.e. 22.10.2019.

Management-1 & 2 had filed their WS respectively. They had denied the averment made in the claim. Respondent-2 submits that the service record of the workman never been clear many times he alongwith his two other colleague namely **Ravi Kant Tiwari & Vijay Tiwari** remained unauthorized absent from the duties, all these person without any reason wrote a false and fabricated complaint to the management-1. The undersigned management decided to conduct the domestic enquiry against the workman, **Mr. Puneet Saini,** was appointed as "Enquiry Officer" who conducted domestic enquiry to enquire the authenticity of charged leveled in the charge-sheet. Intimation of next date as 30.09.2019 was sent to the workman on 19.09.2019 via speed post at his address as available with the management. The enquiry was conducted on principal of nautral justice and equity, equal and fair opportunity was given to the workman and on 30.09.2021 workman despite having knowledge of holding of domestic enquiry never appeared before the enquiry officer. Thus, due to the non-appearance of the workman in the enquiry, enquiry was conducted an ex-parte. Since the workman was ex-parte and despite having knowledge of next date i.e. 17.10.2019 also did not appear and on that date the undersigned management produced two witnesses i.e. **Sh. Pardeepan C, Manager HR & Finance (MW1) and Sh. Nidhin Kumar, Branch Manager, Delhi NCR (MW2)** and after recording their statement the Enquiry Officer submitted his report on 22.10.2019. Since all the charges were duly proved against the claimant accordingly, he was dismissed from the services and the undersigned management also made full and final and paid amount of **Rs. 43,335/-** to the workman through account transfer. The claim of the claimant is not maintainable and is liable to be dismissed.

From the completion of the pleadings, following issues have been framed Vide order dated 11.01.2023 i.e.:-

1. Whether the proceeding is maintainable.
2. Whether there exists employer and employee relationship between claimant and management No. 1.
3. Whether the service of the claimant was illegally terminated by management No. 2.
4. To what other relief the workman is entitled to and from which date.

Now, the matters are listed for workman evidence. Today, the AR of the workman submits that he has no contact with the workmen since long; as such he is unable to file the affidavit of evidence of workmen.

In the absence of claimant. Claim of the claimant stands dismissed. Award is accordingly passed. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. File is consigned to record room.

Date:- 16.05.2024

ATUL KUMAR GARG, Presiding Office

नई दिल्ली, 9 अगस्त, 2024

का.आ. 1563.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कंटेनर कॉर्पोरेशन ऑफ इंडिया लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. **II दिल्ली** के पंचाट (253/2021) प्रकाशित करती है।

[सं. एल-12025/01/2024-आई आर (बी-I)-208]
सलोनी, उप निदेशक

New Delhi, the 9th August, 2024

S.O. 1563.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.253/2021*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. -* II *Delhi* as shown in the Annexure, in the industrial dispute between the management of Container Corporation of India Ltd and their workmen.

[No. L-12025/01/2024– IR(B-1) -208]

SALONI, Dy. Director

ANNEXURE

BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 253/2021

Sh. Bhagwan Singh, S/o Sh. Chote Lal,

R/o- C-81, Gali No.-04, Mohan Baba Nagar,

Badarpur, Delhi-110044.

Through- Indian National Migrant Worker's Union,

1770/8, 3rd Floor Govind Puri Extn. Main Road, Kalkaji,

New Delhi-110019.

Versus

1. **Container Corporation of India Ltd.**

   Inland Content Depot, Tughlakabad, New Delhi-110020.

2. **Til Ltd.**

   Plot No-11, Site-IV, Shibabad Industrial Area,

   Uttar Pradesh-201005.

AWARD

This is an application U/S 2A of the **Industrial Disputes Act (here in after referred as an Act).** It is the case of the claimant that he was appointed as **Batir Operator** with a final salary of Rs 13,600/- per month. He was working with respondent no. 1 through respondent no. 2 since 19-04-2017. Respondent no.- 1 is the main employer and the respondent no. -2 is the one in which the employee worked. Respondent no. -2 is a fake contractor who has been appointed by the employers in violation of the **CONTRACT LABOR (REGULATOIN AND ABOLITION) ACT 1970** only with the intention of not providing legal facilities to the employees like respondent no. 1. Record of employee was shown in the records of respondent-2, where he never had any relation with the respondent no. 2. The Delhi Government has not issued any notification to the respondent no. 1 for imposing contractual labor under the **CONTRACT LABOR (REGULATOIN AND ABOLITION) ACT 1978** nor the Government has registered the respondent No. 2 under the said Act nor any contractor has any license to work **M/s CONTAINER CORPORATION OF INDIA LTD.,** has any contract made between the employer and the contractor is false **(SHAM)** and **(CAMOUFLAGE).** Every employee working in **M/s TIL LIMITED** is an employee of **M/s CONTAINER CORPORATION OF INDIA LTD**. The employers were violating the labor laws, they were not providing legal facilities like: minimum salary as per the post declared by the government, appointment letter, salary sheet, leave book, attendance card, weekly and festival leave, bonus, PF, etc. The salary register and attendance register was also not maintained properly nor employees being paid overtime. The service record of the employee was clean. At the time of appointment and during the service, the employer had made the employee sign in blank papers several times, agreement letter and blank appointment letter but did not give a copy of the same to the employee. The employer did not provide many legal facilities to the applicant/employee like appointment letter, salary letter, leave book, attendance card, weekly and festival leave, bonus, overtime, ESI, PF, etc. When the employee demanded all the above mentioned legal benefits, the employer immediately became angry and in a spirit of revenge, withheld the salary earned by the employee from 22-12-2019 to 28-01-2020 without any prior notice to the employee. Without any notice, charge sheet and without any reason, the employers made the applicant forcibly sign some blank papers, vouchers and final agreement papers. On 29-01-2020, he was terminated from the job, neither permission was taken from the government nor seniority list was made even though the employee has worked more than 240 days every year. Therefore, terminating from the job is illegal, unjust and a violation of natural justice. After being terminated from the job, the applicant/employee is going to work every day except weekly holidays, but the employer is neither hiring the employee back nor allowing him to mark his attendance nor paying his salary. He has gone to the conciliation officer, but, no result was yielded. Hence he has filed the claim. After being terminated from the job, the applicant/employee also tried to get a job through the Labor Department, but the employers did not co-operate with the Labor Department. He is unemployed since the date of illegal termination.

Management-1 had been proceeded ex-parte vide order dated 24.05.2022. Management-2 had filed the W.S, and he denied the averment made in the claim. He has submitted that claims are liable to be dismissed.

After completion the pleadings, following issues have been framed vide order dated 30.08.2022 i.e.:-

1. Whether the proceedings is maintainable.
2. Whether the claimant was the employee of the management-1 i.e. Container Corporation of India.
3. Whether the contract between the management no.1 and 2 is sham and camouflage the legal rights of the claimant.
4. Whether the service of the claimant is illegally terminated by the managements.
5. To what relief the claimant is entitled to.

Now, the matters are listed for workman evidence. Neither the workman nor the management appeared. Notice was issued to both the parties vide order dated 24.01.2024. None appeared on behalf of the both the parties. The AR of the workman submits that he has no contact with the workmen since long; as such he is unable to file the affidavit of evidence of workmen.

In absence of the Claimant. Claim of the claimant stands dismissed. Award is accordingly passed. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. File is consigned to record room.

Date 15th May, 2024

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 9 अगस्त, 2024

का.आ. 1564.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **टाटा कम्युनिकेशंस लिमिटेड,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री सुदीप कुमार बंदोपाध्याय, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय,कोलकाता,पंचाट (संदर्भ संख्या **REF. NO.01 OF 2021**) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 9.08.2024को प्राप्त हुआ था।

[सं. एल-42025/07/2024-127-आई आर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 9th August, 2024

S.O. 1564.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 01 OF 2021) of the **Central Government Industrial Tribunal cum Labour Court, Kolkata,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Tata Communications Ltd., and Shri Sudip Kumar Bandopadhyay, Worker,** which was received along with soft copy of the award by the Central Government on 9.08.2024.

[No. L-42025/07/2024–127- IR(DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

CGIT-01 OF 2021

Shri Sudip Kumar Bandopadhyay …….. Applicant/Employee

Versus

Tata Communication Ltd. … Opp. Party/Employer

Appearance:

On behalf of the Appellant/Employee: Sri Kumarjit Das, Ld. Advocate.

On behalf of Opp. Party/Employer: Sri Ranjay De, Ld. Advocate.

Date: 4TH July, 2024

A W A R D

Record is put up for passing necessary order in respect of management's petition dt. 27-07-2023 whereby the management of Tata Communication Limited has challenged the maintainability of the present application u/s 2A(2) of the Industrial Disputes Act, 1947 filed by its employee Sri Sudip Kumar Bandyopadhyay, challenging his suspension from the service before disposal of the domestic enquiry initiated against him and before final decision being taken by the management on the continuity of his employment with Tata Communication Ltd.

The management in such application has alleged that the present application u/s 2A(2) is a pre-matured one. That in order to invoke the provision of section 2A of the I.D. Act, first the employer has to discharge, dismiss, retrench or terminate the service of an employee, but in the present case admittedly till date the concerned workman/employee has not been discharged, dismissed, retrenched or terminated from the service by the employer Tata Communication Ltd. He has been placed under suspension and domestic enquiry on the charge of misconduct is still pending. That there is no severance of employer-employee relationship between the employee Sri Sudip Kumar Bandopadhyay and his employer Tata Communication Ltd. till date. That Sri Sudip Kumar Bandopadhyay is paid subsistence allowance by Tata Communication Ltd. from the date he has been placed under suspension.

Therefore, the management has prayed for dismissal of the application u/s 2A (2) filed by the workman being pre-matured and alleged this Tribunal has no jurisdiction to entertain the same.

On the other hand such application of the management has been contested by the concerned employee Sri Sudip Kumar Bandyopadhyay by filing a written objection, where he has alleged that he has been placed under suspension on the basis of a false allegation on 10-06-2019. Charge has been framed against him on 24-10-2919. That management decided to hold enquiry against the charge brought against him on 02-03-2020 and even after lapse of five years the management has not been able to conclude the domestic enquiry. That prolonged suspension tantamount to deemed retrenchment or termination as section 2A of the I.D. Act specifically provides the term "or otherwise terminate the service of an individual workman". Therefore, the workman has prayed for dismissal of the management's application.

Ld. Counsel for both the management and workman have filed voluminous written notes of argument on the issue of maintainability of an application u/s 2A(2) filed by a suspended workman and one who has not been terminated from the service till date and who has been receiving subsistence allowance from the date of suspension till date.

The management has placed reliance on the following citations:-

1. Hindustan Lever Ltd. –vs- Fourth Industrial Tribunal& Ors, 2007(1) L.L. N. 881.
2. Ramchandra Keshav Adke (Dead) By LRs & Ors. –vs- Govind Joti Chavare & Ors. (1975) 1 SCC 559.
3. State of Odisha & Anrs. –vs- Satish Kumar Ishwardas Gajbhiye & Ors., 2021 SCC OnLine SC 1238.
4. The Workmen & Ors. –vs- M/s. Hindustan Lever Ltd., (1984) 1 SCC 728.
5. Arun Kumar & Ors. –vs- Union of India & Ors. (2007) 1 SCC 732.
6. State of Bihar & Ors. –vs- Arbind (2013) 16 SCC 615.

On the other hand Ld. Counsel for the workman has referred the following decisions:-

1. M/s. Peerless Inn –vs- Fourth Industrial Tribunal, 2017 SCC OnLine Cal 1770.
2. Union Territory of J & K & Anrs. –vs- Hital Ahmead Rathar passed by High Court of Jammu & Kashmir and Ladakh at Srinagar in Writ Petition No. WP (C) No.1771 of 2022 on 24-08-2022.
3. Order dt. 04-07-2023 passed by Hon'ble Supreme Court of India in SLP No.16543 of 2023 affirming the order passed in WP (C) No.1771 of 2022 passed by High Court of Jammu & Kashmir and Ladakh at Srinagar.
5. Western India Plywood Ltd. –vs- P. Ashokan (1997) 7 SCC 638.
6. Sandipta Gangopadhyay –vs- Indian Bank & Ors. 2020 SCC OnLine Cal 2556,
7. Ajay Kumar Choudhary –vs- Union of India through its Secretary & Anrs. (2015) 7 SCC 291.
8. Md. Mobin –vs- State of U.P. & Ors. 1997 (76) FLR 498.
9. Prem Nath Bali –vs- Registrar, High Court of Delhi & Anrs. (2015) 16 SCC 415.
10. Manager, Hotel Imperial, New Delhi –vs- Chief Commissioner, Delhi & Ors. 1959 SCC OnLine SC 160.

11. The Chairman cum Managing Director, Tangedco, & Ors. –vs- R. Balaji passed by Madras High Court in W.A. No.68 of 2021 on 27-08-2021.

In the Written Notes of Argument Ld. Counsel for workman has also enclosed Industrial Employment (Standing Orders) Central Rules, 1946 and copy of charge sheet and the documents served upon the applicant/workman Sri Sudip Kumar Bandyopadhyay.

Now, let me see whether the present case u/s 2A of the I.D. Act, 1947 filed by Sri Sudip Kumar Bandyopadhyay, an employee of Tata Communication Ltd. on 25-01-2021 and where he has sought relief in the nature of declaration and permanent injunction maintainable?

He has claimed that his suspension be declared to be illegal being based on the purported model standing order not approved by the appropriate authority under the I.D. Act, 1947; that industrial dispute raised by him vide letter dt. 08-06-2020 and 16-06-2020 is valid. He has prayed for cancellation of his suspension order and subsequent proceeding including the domestic enquiry initiated against him. Further, he has prayed that necessary direction may be given to the employer company for his reinstatement, to pay all his accumulated dues since the date of suspension till the date of his reinstatement along with interest @ 12% on the accumulated dues and to restrain the employer and its agent including the Enquiry Officer from passing any further order or to give effect to any earlier order till the disposal of his application u/s 2A.

Apparently, the relief sought by Sri Sudip Kumar Bandyopadhyay by filing the present application u/s 2A(2) of the I.D. Act, appears to be declaratory in nature with prohibitory order which is normally granted by a civil court under Specific Relief Act, 1963 i.e. relief in the form of declaration and relief in the form of injunction or relief which can be granted by a writ court against the State.

Be that as it may, facts leading to the present dispute in gist are that applicant was appointed as Assistant (Finance & Accounts, Grade NE-5) at Tata Communication Ltd. on 04-06-1999, in Videsh Sanchar Nigam Ltd. on compassionate ground. (***Such facts mentioned by the applicant appears to be misleading as when he joined the service on 04-06-1999 on compassionate ground, Videsh Sanchar Nigam Limited an Indian Tele-communication company was a Govt. owned tele-communication service provider under ownership of Department of Tele-communication, Ministry of Communication, Govt. of India. That it was acquired or purchased by Tata Group in the year 2008 only. So, it appears on acquisition of VSNL by Tata Communication Ltd. he was absorbed by Tata Communication Ltd)***.

It is the case of the workman that from Assistant (Finance & Accounts, Grade-NE-5) he was promoted to Grade-NE-6, then as Chief Assistant, Grade-NE-7 on 01-03-2005 and lastly he was promoted as Supervisor. That his job was to coordinate regarding space allotment for the entire Eastern region, comprising Kolkata and other Tier-II locations covering Guwahati, Bhubaneswar, Patna, Raipur and Jamshedpur etc., to look after small and repair and maintenance activities, pantry and cafeteria facilitation, organizing events, sports and cultural activities, facing audit, renewal of Fire License and Lift License and other organizational activities.

That all on a sudden he was served with a suspension order on 10-06-2019. Then he was served with the charge sheet dt.24-10-2019 for committing misconduct under Tata Code of Conduct on 29-10-2019 i.e. after four months of placing him under suspension, for creating multiple editable invoices, documents of vendors, tendering works without inviting tenders and quotations, changing the quotations, manipulating the entire system and granting contracts to vendors of his choice, for indulging un-identified NFT transfer amounting to Rs.3,35,628/- during the period from 2010 to 2015, shifting objectionable content using TCL e-mail address, drafting invoices and templates for third party vendors, creating conflict of interest between the vendors and the TCL, collecting unjustified donation for puja committee of which he was an instrumental member and for failure to project and uphold the value of the company.

That for non-supply of documents he was unable to furnish reply to the charge. That he was provided with the documents relied upon by the management only on 10-02-2020. That he challenged the charge by writing a letter dt. 20-02-2020, with a request to the employer to issue a fresh charge with collated documents **(here question arises, can an employee demand the employer to issue a fresh suitable charge sheet as per his choice?)**.

Then he was informed about the management's decision to hold domestic enquiry against him on the charge on 02-03-2020. Once again he requested the management to supply collated documents by sending a letter dt.07-03-2020, but he was informed about appointment of an Enquiry Officer and the venue of enquiry to be Delhi vide letter dt.14-05-2020.

Then E.O. vide letter dt. 04-06-2020 informed him the date of hearing to be 13-06-2020. That during Covid period, the management decided to hold the enquiry through video conference and against such decision of the management he raised an objection for his lack of knowledge on video conference.

That he appointed Mr. B. Joseph Monoharan, Secretary General of Tata Communication Limited Employees Union as his defense assistant and who being 70 years of age was not in a position to travel all the way from Chennai to Delhi to participate in the domestic enquiry. Further, due to non-availability of the video conference facilities

structure at the Chennai office of Tata Communication Ltd. Employees Union, his defense assistant could not participate in the hearing conducted through video conference.

That Tata Communication Ltd. Employees Union also raised a dispute on his behalf before Deputy Labour Commission and as such he requested the Enquiry Officer to postpone the enquiry proceeding scheduled on 06-07-2020, but the proceeding was convened and deferred to 07-08-2020.

In the meantime, he moved the Hon'ble High Court, Calcutta under Article 226 of the Constitution of India, challenging the domestic enquiry and the charge. That such writ petition is still pending for disposal.

That he has challenged the purported Model Standing Order or the Tata Code of Conduct, not being certified before the E.O., but the E.O. has failed to consider his submission. That he has alleged that Enquiry Officer is proceeding with the domestic enquiry based on the uncertified Tata Code of Conduct. He has also alleged that domestic enquiry held against him on the basis of a false and frivolous charge. Therefore, he filed the present application for his reinstatement, for cancellation of the suspension order, withholding the enquiry proceeding brought against him and for declaration that charge brought against him is false and frivolous.

Since the present case is u/s 2A of the I.D. Act, raised by an individual workman challenging his suspension order, charge sheet and for stalling the ongoing domestic enquiry against him and for determination of maintainability of such relief claimed by the individual workman, it is necessary to reproduce section 2A of the I.D. Act, 1947.

Section 2A of the I.D. Act read as follows :-

Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.-- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section l0, any such workman as is specified in sub-section *(1)*may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section *(2)* shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section *(1)*.

Thus, on reading of section 2A of the I.D. Act, it appears to this Tribunal, that a person who comes within the definition of workman as defined in section 2(s) of the I.D. Act, can invoke the provisions of section 2A of the I.D. Act, if he is discharged, dismissed, retrenched and terminated from the service by his employer. Such dispute raised by an individual workman is deemed to be an industrial dispute as defined u/s 2(k).

In standard Vacum Oil Company Errakuman V. Industrial Tribunal, Errakuman 1952-(II) LLJ 612. The individual and collective disputes are explained that, 'Individual as well as collective disputes may ripens into Industrial Disputes. The quo nature in Industrial Dispute is that it is a collective dispute. Though a dispute may at a very inception be initiated by individual, yet if it is taken up by the fellow workers or a union, or a sufficient number of workers, it may assume the collective character and would become an Industrial Dispute'. A dispute which continues to retain its individual character cannot be recognized as Industrial Dispute. This being the basic law it is within the competence of the legislature to widen or narrow the coverage of an Industrial Dispute.

In 1965 by the Act of 1965, a new Section 2A was added in the principal Act, (the I.D Act, 1947) so as to add a specified categories of Industrial Dispute which may also deemed to be an Industrial Dispute. The 2A section (as it then introduced) reads; Dismissal etc., of an individual workman to be deemed to be an industrial dispute. Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

This amendment does away the necessity that, to make an industrial dispute it must be taken up or espoused by a substantial section of the workmen or any union of those workmen and to provide an individual workman a remedy for security of its service and indirectly freedom to join or not to join any union.

Further, there was an amendment in Section (2A) of the Act, vide Amendment Act (Act No. 24 of 2010) and by virtue of such amendment present Section (2A) already reproduced above came into existence. Thus, present

Section 2A of the Industrial Disputes Act, 1947, provides that where any employer discharges, dismisses, retrenches or otherwise terminates the service of an individual workman, any dispute or difference between that workman and his employer connected with or arising out of such discharges etc., shall be deemed to be an industrial dispute notwithstanding that no other workman nor union is a party to the dispute.

The present amended Section (2A) vide Amending Act 24 of 2010, empowers a workman to approach the labour court or tribunal by way of making an application directly not withstanding anything contained in Section 10 for adjudication of the disputes arising out of dismissal, discharge, retrenchment or otherwise termination after the expiry of (Forty Five) days from the date he makes the application to the Conciliation Officer of the Appropriate Government for conciliation of the dispute and the labour court or tribunal is empowered to adjudicate such dispute. So, apparently, section 2A of the I.D.Act, does not speaks of existence of an industrial dispute between the employer and employee who is placed under suspension and between whom there still exists the relationship of employer and employee.

When a workman is dismissed as a result of a domestic enquiry the only power which the Labour Court has is to consider whether the enquiry was proper and if it was so, no further question arises. Findings properly recorded at an enquiry fairly conducted are binding on parties unless is shown that such findings were perverse.

In the present case it is admitted facts that the concerned workman without raising any industrial dispute with regard to his suspension before the Labour Commissioner/ Conciliation Officer and before obtaining any certificate from such Conciliation Officer u/s 2A (2) has filed the present case and during the pendency of the domestic enquiry he has filed the present case and till date he has not been retrenched, dismissed, discharged and terminated from the service by his employer.

Ld. Counsel for the management submitted that it is settled law that an order of suspension never puts an end to the service of an employee. That the employee is not entitled to the salary but is eligible to get subsistence allowance. That in the present case the workman is paid subsistence allowance.

He further submits that there must be existence of severance of relationship of employer and employee between the concerned workman and TCL to attract the provisions of section 2A and in present case there is absence of such ingredients. Therefore, this Tribunal lacks jurisdiction to entertain the present pre-matured application u/s 2A of the Act. Section 2A has not vested power to this Tribunal to determine the order of suspension pending domestic enquiry. The question of maintainability of the present case is a question goes to the root of the matter and it need to be decided as a preliminary issue. That this Tribunal acquire power only after dismissal of the concerned workman from the service and not before that when the service of the concerned workman is not yet terminated and dismissed nor he is discharged from service or retrenched from the service.

On the other hand Ld. Counsel for workman placed reliance on Md. Mobin –vs- State of U.P. & Ors. (supra) and contended that prolonged suspension from service can be considered as deemed termination as expression 'otherwise terminate the service' appearing in section 2A means deemed termination.

Gone through the said citation where the issue under dispute is refusal of employment on the ground of abandonment of service by the workman. In the present case the workman is placed under suspension and his service is not yet terminated by the employer as domestic enquiry initiated against him on the charge of misconduct is still pending.

Further, Ld. Counsel for the workman has placed reliance on Peerless Inn (supra). This Tribunal finds the facts and circumstance of the said case entirely different from the present one as in the said case the Govt. of West Bengal has referred a dispute regarding suspension of 19 workmen to the State Tribunal for adjudication, whether the suspension of those workmen to be illegal or legal.

The term 'industrial dispute' is defined in section 2(k) of the Act and means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the condition of Labour of any person.

Thus, Section 2(k) described industrial dispute to be a collective dispute. To consider an individual dispute as an industrial dispute, it must be supported by the trade union of the workers, or if there is no trade union, by the majority of the workers, or it must meet the conditions of Section 2A of the Industrial Disputes Act, 1947. A dispute between an employer and a single workman does not fall within the definition of "industrial dispute" unless workmen as a body or a considerable section of them make common cause with the individual workman then such a dispute would be an industrial dispute. But, by virtue of Section 2A of the Act, individual workman's case of his dismissal, discharge, termination and retrenchment from service is deemed to be an industrial dispute u/s 2(k) of the Act.

In Peerless Inn (supra) the interest of 19 workmen were involved, but in the present case the dispute is in between a single workman and his employer u/s 2A of the Act, and that too not being referred by the Central Govt. for adjudication of the issue, whether the suspension order of the workman is valid or not, after receiving failure report from the Labour Commissioner/Conciliation Officer. In the present case admittedly workman did not raise any

dispute before labour commissioner for conciliation, rather he has directly challenged the legality of his suspension order, charge and pending domestic enquiry before this Tribunal by filing the present application. Therefore, the facts and circumstances of the case referred by the Ld. Counsel for the workman is totally different from the case in hand.

Similarly, the facts and circumstances of another case Prem Nath Bali –vs- Registrar, High Court of Delhi & Anrs. (supra) relied by the Ld. Counsel for the workman is totally different from the present one, as in the present case domestic enquiry is not yet over and question of challenging the same does not arise, but in the above relied judgment question of legality of domestic enquiry was under consideration. No doubt, in the said decision the Hon'ble Supreme Court has been pleased to hold that the departmental enquiry once initiated against a delinquent employee must be completed within a reasonable time by giving priority to such proceeding.

In the present case the contents of the application u/s 2A, itself prove that the domestic enquiry was initiated against the concerned workman during Covid period. Covid pandemic had affected the entire world and in India there was total lock down declared by the Govt. in the end of the month of March, 2020 and which affected normalcy in one's life till the end of 2021.

However, it also appears from the application u/s 2A that the employer keeping in view the pandemic had tried to hold the domestic enquiry through electronic medium i.e. through video conference but the workman has admittedly taken a plea that he not being a techno savvy lacked knowledge of video conference and as such he was unable to participate in the hearing through video conference.

He has also admitted that he took help of Mr. B. Joseph Monoharan, aged 70 years, Secretary General of Tata Communication Limited Employees Union, based in Chennai to act as his defense assistant and who being of aged man was not in a position to travel all the way from Chennai to Delhi to participate in the domestic enquiry or take part in the domestic enquiry through video conference due to non-availability of video conference facility at Chennai union office.

It is a matter of common knowledge in this new age of digitalization, one can access with another through video conference from a most common easily accessible device possessed and owned by each and every person and which is known as mobile phone. Therefore, it is not necessary to have a facilities for video conference at Chennai union office or one has to be techno savvy to get oneself connected through video conference. So, the plea taken by the concerned workman appears to be unfounded and unbelievable and fact when he is an employee of Tata Communication Ltd.

That apart, it appears that the workman has filed a writ petition before the Hon'ble High Court, Calcutta challenging his suspension, charge sheet and pending domestic enquiry and admittedly which is still pending.

In view of the above facts it cannot be said that the management with malafide intention has lingered the domestic enquiry. In fact the conduct of the concerned workman mentioned above can be contribute to be the cause of delay in completion of domestic enquiry. Apparently, the workman has challenged not only his suspension order, but also charge of misconduct brought against him and pending domestic enquiry in different forums. Such facts itself prove that the workman is the one who wants to evade or avoid to face the domestic enquiry. These factors could be the reason for delay in completion of domestic enquiry. So, one cannot put blame entirely on the management for delay in conclusion of the domestic enquiry.

Further, I am not inclined to discuss the other citations referred by the parties as facts and circumstances of those cases are entirely different from the present one. Moreover, it is settled law each case has to be decided on its own merit as facts and circumstances of each case defers from others and Court should not place reliance on decisions without discussing as to how fact situation of case before it fits in with fact situation of decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of statute and that too taken out of their context. They must be read in context in which they appear to have been stated. Disposal of case by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases. Precedent should be followed only so far as it marks the path of justice.

It is a matter of common knowledge that suspension is not discharge of employment or permanent termination of employment. It only prevent the workman from attending the office and duty till the investigation of the charge of misconduct is over. That during the period of suspension the workman is paid subsistence allowance and not full salary. That there is no severance of relationship of employee and employer during the period of suspension.

That the suspension does not result in dismissal from the job. That if the employee is found guilty of the charge of misconduct in domestic enquiry and if the disciplinary committee decides the verdict against the delinquent employee and if the employer decides to terminate the service of the delinquent workman then only there will be the permanent termination of the service of workman.

In the present case the concerned workman not being discharged, dismissed, retrenched and terminated from the service by the employer till date, then question of raising any industrial dispute by him u/s 2A of I. D. Act does not arise. That placing him under suspension cannot be deemed to be his termination.

Therefore, this Tribunal holds the case u/s 2A(2) of the I.D. Act is not maintainable being pre-matured and accordingly the same is dismissed. However, the management of Tata Communication Ltd. is hereby directed to see that concerned Enquiry Officer completes the domestic enquiry already initiated against the concerned workman within three months from the date of receipt of this order. The Enquiry Officer is directed to conduct the hearing on day to day basis without granting any kind of adjournment whatsoever sought by the management or by the workman to delay the enquiry proceeding. That Enquiry Officer is directed to hold the domestic enquiry in compliance of principle of natural justice and to conduct the hearing in presence of workman unless the workmen choose not to attend or avoid the hearing. Then he shall proceed with the domestic hearing as per rules and law.

More so, that pendency of any related proceeding, if any, before any court of law cannot be a ground for stay of the domestic enquiry as the domestic enquiry and those pending proceedings, if any, are to be proceeded on its own until and unless there is an order of stay of domestic enquiry from a court of law.

In view of the above CGIT-01 of 2021 u/s 2A of the I.D. Act is dismissed being pre-matured and not maintainable. Office is directed to supply copy of this order to the parties for compliance as mentioned above.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 9 अगस्त, 2024

का.आ. 1565.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **पंजाब नेशनल बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जयपुर** के पंचाट (05/2020) प्रकाशित करती है।

[सं. एल-39025/01/2024- आई आर (बी-II)-32]

सलोनी, उप निदेशक

New Delhi, the 9th August, 2024

S.O. 1565.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 05/2020*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Jaipur as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-39025/01/2024– IR(B-I1)-32]

SALONI, Dy. Director

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टी. प्रकरण सं.– 05/2020

श्री कृपाल सिंह पुत्र श्रीकृष्णा, निवासी– ग्राम मडरपुर, पोस्ट बराखुर, तहसील व जिला– भरतपुर (राज.)।

.....प्रार्थी

बनाम

1. पंजाब नेशनल बैंक, स्वागत भवन के सामने, यू.आई.टी. कैम्पस शाखा, यू.आई.टी. कैम्पस, भरतपुर जरिए प्रबंधक।
2. पंजाब नेशनल बैंक, मण्डल कार्यालय, सुपर मार्केट, भरतपुर, राजस्थान 321001 जरिए क्षेत्रीय प्रबंधक।

3. पंजाब नेशनल बैंक, जोनल ऑफिस 2, पी.एन.बी. हाउस, फर्स्ट फ्लौर, टोंक रोड़, नेहरू प्लेस, लाल कोठी, जयपुर जरिए जोनल ऑफिसर/मैनेजर।

4. पंजाब नेशनल बैंक, प्रधान कार्यालय, सेक्टर–10, द्वारका, नई दिल्ली–110075 जरिए प्रबंध निदेशक।

.....अप्रार्थीगण/विपक्षी

उपस्थितः–

: श्री महेन्द्र कुमार जोशी, अभिभाषक – प्रार्थी।

: श्री सुरेन्द्र सिंह नालोट, अभिभाषक –विपक्षीगण।

: **अधिनिर्णय** :

दिनांक :24. 06. 2024

1. प्रार्थी की ओर से दिनांक 19.02.2020 को यह दावे का अभिकथन अधिकरण के समक्ष औद्योगिक विवाद अधिनियम 1947 की धारा 2। के अन्तर्गत प्रस्तुत किया गया। कालान्तर में मूल विपक्षीगण ओरियंटल बैंक ऑफ कॉमर्स का विलय पंजाब नेशनल बैंक में हो जाने के परिणाम स्वरूप इस अधिकरण के आदेश दिनांक 10.12.2020 द्वारा विपक्षीगण के स्थान पर पंजाब नेशनल बैंक को विपक्षीगण के रूप में संयोजित करने का आदेश दिया गया। तदुनुसार प्रार्थी ने दिनांक 24.12.2020 को संशोधित वाद प्रस्तुत किया। जिसके संक्षिप्त अभिवचन इस प्रकार हैः–

2. प्रार्थी को पीओन/सब स्टाफ के पद पर पूर्ववर्ती ओरियंटल बैंक ऑफ कॉमर्स, भरतपुर की यू.आई.टी. शाखा में अगस्त, 2007 को नियुक्त किया गया था। प्रार्थी द्वारा अगस्त, 2007 से 10.11.2019 तक विपक्षीगण के अधीन निरंतर सेवाये दी गई। दिनांक 11.11.2019 को विपक्षीगण द्वारा प्रार्थी की सेवाये मौखिक आदेश से समाप्त कर दी गई। प्रार्थी ने उसकी सेवाये नियमित करने हेतु विपक्षीगण से कहा था किंतु उसे नियमित नहीं किया गया। विपक्षीगण का यह कृत्य अनुचित श्रमाभ्यास है। प्रार्थी को काम से हटाने से पूर्व औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 25 F की पालना नहीं की गई। प्रार्थी को कोई नोटिस अथवा नोटिस वेतन नहीं दिया गया। प्रार्थी को सेवामुक्त किये जाने के उपरांत विपक्षीगण द्वारा नये श्रमिकों की भर्ती की गई। इस प्रकार अधिनियम की धारा 25 F, G व H का उल्लंघन किया गया। प्रार्थी सेवामुक्ति के उपरांत अब तक बेरोजगार है। अतः इस सेवामुक्ति को अवैध घोषित करते हुये सेवा में निरंतरता एवं विगत वेतन परिलाभों सहित सेवा में वापिस लेने का आदेश पारित किया जावे।

3. विपक्षीगण ने अपने वादोत्तर में यह कहा है कि प्रार्थी को कभी भी बैंक सेवा में नियुक्ति नहीं दी गई। प्रार्थी एवं विपक्षीगण के मध्य कर्मचारी एवं नियोक्ता का संबंध नहीं है। विपक्षी बैंक की नियुक्ति हेतु भारत सरकार के निदेर्शो के अंतर्गत निर्धारित चयन प्रक्रिया है। तदुपरांत ही चयनित व्यक्ति को नियुक्त किया जाता है। बैंक में प्रतिदिन अनेक सेवाये बाहरी व्यक्तियों से ली जाती है जिनको किसी प्रकार से स्थाई अथवा अस्थाई रूप से नियुक्त नहीं किया जाता है, इन बाहरी व्यक्तियों को बैंक का कार्मिक नहीं माना जाता। प्रार्थी ने बैंक में नियुक्ति संबंधी कोई साक्ष्य प्रस्तुत नहीं की है। पीओन बुक पर हस्ताक्षर होने से यह प्रमाणित नहीं होता कि प्रार्थी को बैंक ने नियुक्त किया। प्रार्थी ने फर्जी प्रमाण पत्र प्रस्तुत किये है, जिसकी सत्यता की जॉच हो सकती है। अतः प्रार्थी का वाद अस्वीकार किया जावे।

4. प्रार्थी ने अपने साक्ष्य में AW-1 स्वयं प्रार्थी कृपाल सिंह को परीक्षित किया और प्रलेखीय साक्ष्य में प्रदर्श P-1 से प्रदर्श P-17 तक प्रलेखों को प्रदर्शित किया।

5. विपक्षीगण ने अपने साक्ष्य में श्री सत्यवीर सिंह बाबरिया, वरिष्ठ प्रबंधक को परीक्षित किया और कोई प्रलेख प्रदर्षित नहीं किया।

6. दिनांक 22.04.2024 को प्रार्थी की ओर से उसके अभिभाषक द्वारा लिखित तर्क प्रस्तुत किये गये। उनके प्रमुख तर्क है कि प्रार्थी की नियुक्ति, नियुक्ति प्रक्रिया अपनाकर अगस्त, 2007 में की गई थी। प्रार्थी अधिनियम की धारा 2 (s) के तहत कर्मकार है। बिना विधिक प्रक्रिया अपनाये प्रार्थी की सेवामुक्ति अवैध है। प्रार्थी की छंटनी किये जाने का कोई कारण विपक्षी द्वारा नहीं दिया गया। छंटनी के अंतर्गत कर्मकार का नियमित कर्मकार होना आवश्यक नहीं है। दिनांक 11.11.2019 को सेवा समाप्ति तक प्रार्थी ने 12 वर्ष से अधिक की सेवा निरंतर की और सेवामुक्ति के 1 वर्ष पूर्व की अवधि में भी 240 दिन से अधिक कार्य किया जिसका प्रमाण साक्ष्य में प्रदर्शित प्रलेखों प्रदर्श P-1 से प्रदर्श P-17 तक से होता है। प्रार्थी को सेवामुक्त करने से पूर्व कोई नोटिस या नोटिस वेतन या छंटनी प्रतिकर नहीं दिया गया।

साक्ष्य में प्रदर्शित प्रलेखों को विपक्षी ने भी बैंक के दस्तावेज माना है। सेवामुक्ति के बाद अन्य व्यक्तियों को विपक्षी ने रख लिया। प्रार्थी के नियोजन से संबंधित दस्तावेज विपक्षीगण ने अधिकरण के आदेश के बाद भी प्रस्तुत नहीं किये है। इसलिए विपक्षीगण के विरूद्व प्रतिकूल उपधारण किया जाना चाहिये। सेवामुक्ति के उपरांत प्रार्थी बेरोजगार रहा है। उन्होंने अपने तर्को के समर्थन में निम्नलिखित न्यायिक दृष्टांत प्रस्तुत कियेः–

1. के.वी. अनिल मित्रा व अन्य बनाम श्री शंकराचार्य यूनिवर्सिटी ऑफ संस्कृत व अन्य सिविल अपील नं. 9067/2014 (सुप्रीम कोर्ट) निर्णय तिथि 27.10.2021
2. रणवीर सिंह बनाम एग्जीक्यूटिव इंजीनियर पी.डब्ल्यू.डी. सिविल अपील नं. 4483/2010 (सुप्रीम कोर्ट) निर्णय तिथि 09.02.2021
3. जीतूभा खानसंगजी जडेजा बनाम कच्छ डिस्ट्रिक्ट पंचायत 2022 लाइव लॉ (SC) 797
4. सूरजपाल सिंह व अन्य बनाम पी.ओ. लेबर कोर्ट नं. 111 व अन्य (दिल्ली उच्च न्यायालय) 2002 (95) FLR 521
5. स्टेट ऑफ उत्तर प्रदेश व अन्य बनाम लेबर कोर्ट व अन्य (इलाहाबाद उच्च न्यायालय) रिट & C No. 3192/2017 निर्णय तिथि 08.05.2023

7. दिनांक 30.05.2024 को विपक्षीगण की ओर से लिखित तर्क प्रस्तुत किये गये। विपक्षीगण के यह तर्क है कि विपक्षी बैंक एक राष्ट्रीयकृत बैंक है, जिसमें कर्मकारों की भर्ती, सेवा संबंधी नियमों और प्रक्रिया के अधीन होती है। प्रार्थी को किसी भर्ती विज्ञापन के अनुक्रम में आवेदन प्राप्त कर नियुक्ति नहीं दी गई। जब नियुक्ति ही नहीं दी गई तो सेवामुक्ति भी संभव नहीं हैं। प्रार्थी ने स्वीकार किया है कि नियुक्ति और सेवामुक्ति का कोई लिखित आदेश नहीं है और कोई विज्ञापन भी बैंक ने नहीं निकाला। प्रार्थी विपक्षी संस्थान में बेक डोर ऐन्ट्री चाहता है। बेक डोर ऐन्ट्री को माननीय सर्वोच्च न्यायालय ने विभिन्न निर्णयों में प्रतिबंधित किया है। बैंक में अनेक कार्य ऐसे होते है जिनमें कोई नियुक्ति नहीं की जाती और ऐसे कार्य मौखिक अनुबंध फीस/ खर्च का भुगतान करके करवाये जाते है। प्रार्थी द्वारा ऐसा कार्य आकस्मिक एवं अनियमित रूप से किया गया इसलिए प्रार्थी और विपक्षी के मध्य मालिक और मजदूर का संबंध नहीं हैं प्रार्थी अपने साक्ष्य से सेवा समाप्ति के पूर्ववर्ती एक कलेण्डर वर्ष 240 दिन से अधिक कार्य करना प्रमाणित नहीं कर सका है। ऐसी स्थिति में अधिनियम की धारा 25 F के प्रावधानों का संरक्षण प्रार्थी को नहीं दिया जा सकता। सेवामुक्ति के बाद गोविन्द नाम के नये व्यक्ति को कार्य पर रखे जाने संबंध में प्रार्थी ने कोई दस्तावेज पेष नहीं किया। इस प्रकार प्रार्थी अपना पक्ष प्रमाणित करने में विफल रहा है। अतः वाद निरस्त किया जावे।

8. उन्होंने अपने तर्क के समर्थन में निम्नलिखित न्यायिक दृष्टांत प्रस्तुत कियेः–
   1. सेक्रेटरी, स्टैट ऑफ कर्नाटक बनाम उमा देवी व अन्य 2006 SCC (L&S) 753
   2. स्टैट ऑफ हिमाचल प्रदेश बनाम सुरेश कुमार वर्मा व अन्य (1996) 7 SCC 562
   3. मोहम्मद अली बनाम स्टैट ऑफ हिमाचल प्रदेष (2018) 15 SCC 641
   4. सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत बनाम डाया भाई अमर सिंह (2005) 8 SCC 750
   5. सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत बनाम गंगाबेन लालजी भाई (2006) 9 SCC 132
   6. रेंज फोरेस्ट ऑफीसर बनाम एस. टी. हादीमनी AIR 2002 सुप्रीम कोर्ट 1147
   7. म्युनिसिपल कारपोरेषन फरीदाबाद बनाम सिरी निवास 2004 (5) SLR 816

9. उभयपक्ष के अभिवचनों एवं तर्को पर विचार के पश्चात इस विवाद में निम्नाकिंत विचारणीय बिन्दु उत्पन्न हुये हैः–
   1. क्या प्रार्थी को अगस्त, 2007 में पीओन/सब स्टाफ के पद पर विपक्षी द्वारा नियुक्त किया गया तथा प्रार्थी ने दिनांक 11.11.2019 तक विपक्षी के अधीन 240 दिन से अधिक की सेवा पूर्ण कर ली फिर भी विपक्षी द्वारा दिनांक 11.11.2019 को प्रार्थी की सेवायें मौखिक रूप से समाप्त करते हुये अधिनियम की धारा 25 F के प्रावधानों का अनुपालन नहीं किये जाने से सेवा समाप्ति अवैध है?

.....प्रार्थी

2. क्या प्रार्थी की सेवायें दिनांक 11.11.2019 को मौखिक आदेश से विपक्षी द्वारा समाप्त किया जाना अनुचित श्रमाभ्यास है?

.....प्रार्थी

3. क्या प्रार्थी को सेवामुक्त किये जाने के उपरांत विपक्षी द्वारा नये श्रमिकों की भर्ती पीओन के पद पर की गई जो अधिनियम की धारा 25 G व H के प्रावधानों के विपरीत होने से अवैध है?

.....प्रार्थी

4. अनुतोषः

10. विचारणीय बिन्दुओं पर क्रमिक विनिष्चय इस प्रकार हैः—

11. **<u>विचारणीय बिन्दु संख्या—1</u>**

12. प्रार्थी कृपाल सिंह ने अपने साक्ष्य के शपथ—पत्र में यह कहा है कि उसे विपक्षीगण द्वारा पीओन/सब स्टाफ के पद पर माह अगस्त, 2007 में नियुक्ति प्रकिया अपनाकर नियुक्त किया गया था। प्रतिपरीक्षा में कृपाल सिंह ने यह स्वीकार किया है कि उसे बैंक ने कोई नियुक्ति पत्र नहीं दिया तथा नियुक्ति हेतु कोई विज्ञापन बैंक ने नहीं निकाला। उसे अनूप सिंह नाम के व्यक्ति ने जोकि चाय की थड़ी चलाता था, ने सूचित किया। उसका इंटरव्यू श्री एल. आर. जाटव साहब ने लिया था इसके पश्चात प्रार्थी यह भी स्वीकार करता है कि उसने सब स्टाफ/पीओन के पद पर नियुक्ति संबंधी कोई दस्तावेज पेश नहीं किया, क्योकि उसे दिया ही नहीं गया। इसके विपरीत विपक्षी ने अपने साक्षी श्री सत्यवीर सिंह बाबरिया के माध्यम से यह कहा है कि प्रार्थी को बैंक द्वारा नियुक्त नहीं किया गया इसलिए सेवामुक्ति का प्रश्न ही उत्पन्न नहीं होता। लेकिन साक्षी ने यह स्वीकार किया है कि नियमित कर्मकार की अनुपलब्धता होने पर सफाई कार्य अस्थाई दैनिक वेतन भोगी कर्मकार से करवाया जाता था। प्रार्थी द्वारा यह कार्य जो 2—3 घंटो से अधिक नहीं होता था, कार्य की उपलब्धता पर करवाया जाता था। इस स्थिति में यह तो स्पष्ट होता है कि प्रार्थी को चाहे अंषकालीन कार्य संपादन हेतु रखा गया हो, विपक्षीगण द्वारा प्रार्थी से कार्य लिया गया है। यह सही है कि प्रार्थी नियमित रूप से विहित चयन प्रक्रिया के अधीन नियुक्त कर्मकार नहीं है। लेकिन प्रार्थी ने जब—जब विपक्षी के अधीन कार्य किया उसे परिश्रमिक का भुगतान विपक्षी द्वारा किया गया। कर्मकार चाहे पूर्णकालिक हो या अंषकालीन अधिनियम की धारा 2 (s) के अंतर्गत वह कर्मकार माना जाता है। प्रार्थी ने अगस्त, 2007 से पीओन/सब स्टाफ के पद पर विपक्षी द्वारा नियुक्त किये जाने संबंधी कोई अभिलेख प्रस्तुत नहीं किया है। प्रार्थी ने प्रदर्श P-1 पीओन बुक की फोटो प्रति इस संबंध में प्रदर्शित की है जिसमें सर्वप्रथम दिनांक 06.11.2009 को प्रार्थी के हस्ताक्षर, पत्र वितरित करने वाले व्यक्ति के रूप में किये गये है। इसके पूर्व का कोई प्रलेख न तो प्रार्थी ने प्रस्तुत किया है, न ही विपक्षी से प्रस्तुत करवाने हेतु कोई आवेदन किया है। प्रार्थी द्वारा प्रस्तुत प्रार्थना पत्र दिनांक 09.03.2021 में प्रार्थी ने सर्वप्रथम विपक्षी से जो प्रलेख प्रस्तुत करवाने हेतु आवेदन किया है वह वर्ष, 2009 से 10.11.2019 तक के विभिन्न प्रलेख है, इसलिये वर्ष, 2009 के पूर्व प्रार्थी और विपक्षी बैंक के मध्य कर्मकार एवं नियोजक का संबंध अस्तित्व में होने संबंधी कोई साक्ष्य उपलब्ध नहीं है।

13. प्रार्थी ने अपने शपथ पत्र में यह कहा है कि उसने विपक्षी के अधीन दिनांक 11.11.2019 को सेवा से हटाये जाने के पूर्व की 12 कलेण्डर मास की अवधि में 240 दिन से अधिक कार्य लगातार किया है। इस संबंध में प्रार्थी ने पीओन बुक प्रदर्श P-1, क्लियरिंग हाउस समरी प्रदर्श P-2, पेमेन्ट वाउचर्स रजिस्टर प्रदर्श P-16 प्रस्तुत किये है। प्रदर्श P-1 पीओन बुक दिनांक 08.11.2019 तक संधारित की गई है। जिस पर प्रार्थी के हस्ताक्षर विद्यमान है। क्लियरिंग हाउस समरी प्रदर्श P-2, दिनांक 07.11.2019 तक अंतिम दिनांकित है जिस पर प्रार्थी द्वारा हस्ताक्षर किये गये है। प्रदर्श P-15 रंगीन फोटोग्राफ्स प्रार्थी ने प्रस्तुत किये है किंतु इन फोटोग्राफ्स को साक्ष्य में प्रमाणित नहीं करवाया गया है, और न ही इनसे यह प्रमाणित होता है कि इन फोटोग्राफ्स में किस तिथि पर प्रार्थी विपक्षी बैंक के कर्मचारियों के साथ उपस्थित रहा। प्रदर्श P-16 विपक्षी बैंक का दैनिक कर्मचारी पेमेन्ट वाउचर्स रजिस्टर है जो विपक्षी ने दिनांक 26.09.2018 तक का प्रस्तुत किया है जिसमें समय—समय पर दैनिक कर्मचारी के रूप में प्रार्थी कृपाल सिंह का नाम अंकित है।

14. उल्लेखनीय है कि प्रार्थी ने विपक्षीगण से दिनांक 09.03.2021 को प्रार्थना पत्र प्रस्तुत कर अन्य प्रलेखों के साथ वर्ष, 2009 से 10.11.2019 तक का पेमेन्ट वाउचर्स रजिस्टर तथा वाउचर्स बंच प्रस्तुत करवाने का निवेदन किया था। विपक्षीगण ने दिनांक 14.07.2021 को इस प्रार्थना पत्र का प्रतिउत्तर प्रस्तुत किया और यह कहा "कि पेमेन्ट वाउचर्स रजिस्टर व वाउचर्स बंच 2009 से 10.11.2019 अप्रार्थी बैंक का गोपनीय व आंतरिक दस्तावेज है। उक्त दस्तावेजात से

प्रार्थी का कोई संबंध न होने से उक्त दस्तावेज सुसंगत नहीं है" इस कथन से यह तो स्पष्ट है कि विपक्षीगण ने उक्त पेमेन्ट वाउचर्स रजिस्टर व वाउचर्स बंच को स्वयं के आधिपत्य में होने से इंकार नहीं किया किंतु प्रार्थी से संबंधित न होने के आधार पर सुसंगत नहीं माना। इसके पष्चात अप्रार्थी ने अपने प्रतिउत्तर दिनांक 06.09.2021 में भी यह स्वीकार किया कि पेमेन्ट वाउचर्स रजिस्टर व वाउचर्स बंच 2019 से 2021 उपलब्ध है। क्लियरिंग हाउस समरी 2018 से नवम्बर, 2019 तक उपलब्ध है। उल्लेखनीय यह है कि विपक्षीगण ने प्रलेखों की इस उपलब्धता का समर्थन अपने प्रबंधकों के शपथ पत्रों के माध्यम से किया है। अधिकरण द्वारा दिनांक 17.09.2022 को आदेश पारित करते हुये यह आदेष दिया है कि पेमेन्ट वाउचर्स रजिस्टर व वाउचर्स बंच वर्ष, 2009 से 10.11.2019 तक चूंकि विपक्षी के आधिपत्य में है, विपक्षी इन प्रलेखों को मूलरूप में या प्रमाणित फोटोप्रति के रूप में प्रस्तुत करें। इस आदेश के अनुसरण में दिनांक 31.03.2022 को दैनिक कर्मचारी पेमेन्ट वाउचर्स रजिस्टर 01.08.2016 से 27.09.2018 तक प्रस्तुत किया लेकिन 26.09.2018 के उपरांत के रजिस्टर और बंच प्रस्तुत नहीं किये। प्रदर्श P-16/43 पर यह टिप्पणी अंकित है कि 27.09.2018 से दैनिक कर्मचारी को दिये जाने वाले वाउचर्स पेमेन्ट बंद कर दिये गये है। अतः इनकी जगह बिलों के द्वारा मंथली पेमेन्ट दिया जाने लगा। प्रथम तो यह टिप्पणी विपक्षीगण के प्रबंधकों श्रीमती संध्या फौजदार एवं श्री कृष्ण कुमार के शपथ पत्रों के विपरीत है और द्वितीयतः विपक्षीगण ने दैनिक कर्मचारी को वाउचर्स के स्थान पर बिलों द्वारा मासिक भुगतान किये जाने का कोई अभिलेख प्रस्तुत नहीं किया। इस स्थिति में यह प्रमाणित होता है कि प्रार्थी को दिनांक 10.11.2019 तक किये जाने वाले वेतन/परिश्रमिक भुगतान संबंधी अभिलेख विपक्षीगण ने जानबूझ कर आधिपत्य में होते हुये प्रस्तुत नहीं किया। यदि विपक्षीगण इन प्रलेखों को प्रस्तुत करते तो यह नितांत संभव था कि प्रार्थी सेवामुक्ति की तिथि 11.11.2019 से पूर्ववर्ती एक वर्ष की अवधि में 240 दिन से अधिक कार्य किये जाने का तथ्य उन प्रलेखों के आधार पर प्रमाणित कर देता। इसलिए विपक्षीगण के विरूद्व आदेशित प्रलेखों को प्रस्तुत नहीं किये जाने के कारण प्रतिकूल उपधारणा किया जाना न्यायोचित प्रतीत होता है।

15. विपक्षीगण ने प्रदर्श P-16 दैनिक कर्मचारी पेमेन्ट वाउचर्स रजिस्टर दिनांक 26.09.2018 तक प्रस्तुत किया है इसके पश्चातवर्ती रजिस्टर वाउचर्स से पेमेन्ट बंद कर दिये जाने तथा उनके स्थान पर बिलो के द्वारा मासिक भुगतान किये जाने के कारण प्रस्तुत नहीं किये है। विपक्षीगण ने मासिक भुगतान संबंधी बिल भी प्रस्तुत नहीं किये है। प्रदर्श P-16 के अवलोकन से विभिन्न तिथियों पर प्रार्थी को, जोकि दैनिक कर्मचारी है वेतन/परिश्रमिक का भुगतान किया जाना प्रमाणित होता है। विपक्षीगण के विरूद्व प्रतिकूल उपधारण करते हुये यह भी प्रमाणित होता है कि प्रार्थी ने मुख्य परीक्षा में किये गये कथनों के अनुसार दिनांक 10.11.2019 तक विपक्षी के अधीन कार्य किया जिसका भुगतान विपक्षीगण द्वारा मासिक वेतन बिल के आधार पर किया गया। दिनांक 11.11.2019 के पूर्ववर्ती एक कलेण्डर वर्ष की अवधि में इस प्रकार प्रार्थी द्वारा विपक्षीगण के अधीन कार्यरत रहना प्रमाणित होता है। इस निष्कर्ष को प्रदर्श P-1 पीओन बुक से समर्थन प्राप्त होता है जिसमें दिनांक 08.11.2019 को प्रार्थी कृपाल सिंह के हस्ताक्षर पत्र वितरण करने वाले व्यक्ति के रूप में किये गये है। प्रार्थी की ओर से प्रस्तुत निर्णय के.वी. अनिल मित्रा व अन्य बनाम श्री शंकराचार्य यूनिवर्सिटी ऑफ संस्कृत व अन्य में माननीय उच्चतम न्यायालय ने यह कहा है कि कर्मकार की सेवा समाप्ति अनुशासनिक कार्यवाही के उपरांत आरोपित दण्ड के अलावा किसी भी कारण से होने पर कुछ अपवादों सहित छंटनी होती है। यह छंटनी नियोजन की प्रकृति तथा सेवा में प्रवेश की रीति पर निर्भर नहीं होती। छंटनी की वैधता के लिए अधिनियम की धारा 25 F के प्रावधानों का अनुपालन पूर्ववर्ती शर्त है। जिसकी अवहेलना पर सेवा समाप्ति शून्य होती है।

16. प्रार्थी ने माननीय दिल्ली उच्च न्यायालय का निर्णय सूरजपाल सिंह व अन्य बनाम पी.ओ. लेबर कोर्ट नं. 111 व अन्य भी प्रस्तुत किया है जिसमें यह कहा गया है कि सेवा समाप्ति के पूर्व किसी भी वर्ष में 240 दिन कार्य करना प्रमाणित होना पर्याप्त है। किंतु विपक्षी की ओर से प्रस्तुत निर्णय मोहम्मद अली बनाम स्टैट ऑफ हिमाचल प्रदेश में माननीय उच्चतम न्यायालय ने 240 दिन की सेवा किये जाने का तथ्य सेवामुक्ति के तुरंत पूर्ववर्ती एक वर्ष में ही प्रमाणित किया जाना अनिवार्य ठहराया है। इसलिए माननीय दिल्ली उच्च न्यायालय के उपर्युक्त अधिमत से प्रार्थी का पक्ष किसी प्रकार समर्थित नहीं होता है।

17. चूकिं प्रार्थी द्वारा सेवामुक्ति के पूर्ववर्ती एक कलेण्डर वर्ष की अवधि में 240 दिन कार्य किया जाना साक्ष्य से प्रमाणित कर दिया गया है। विपक्षी की ओर से प्रस्तुत निर्णय सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत बनाम डाया भाई अमर सिंह, सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत बनाम गंगाबेन लालजी भाई, रेंज फोरेस्ट ऑफीसर बनाम एस. टी. हादीमनी तथा म्युनिसिपल कारपोरेशन फरीदाबाद बनाम सिरी निवास में माननीय उच्चतम न्यायालय द्वारा पारित मार्गदर्शन विपक्षीगण के पक्ष में तथ्यात्मक भिन्नता के कारण सहायक प्रतीत नहीं होता है।

18. विपक्षीगण ने अपने अभिवचन ओर साक्ष्य में यह कही नहीं कहा है कि उन्होंने दिनांक 11.11.2019 को प्रार्थी की सेवा समाप्त करने से पूर्व उसे एक माह का नोटिस अथवा नोटिस वेतन एवं छंटनी प्रतिकर का भुगतान किया है। जबकि प्रार्थी ने अपने साक्ष्य में यह कहा है कि उसे कोई नोटिस या नोटिस वेतन या छंटनी मुआवजे का भुगतान नहीं किया गया। इस दशा में यह प्रमाणित होता है कि विपक्षीगण ने प्रार्थी की दिनांक 11.11.2019 को मौखिकरूप से सेवा समापन करने के पूर्व अधिनियम की धारा 25 F के प्रावधानों का अनुपालन नहीं किया। इसलिए विपक्षीगण द्वारा की गई सेवा समाप्ति अवैध है। अतः यह बिन्दु प्रार्थी के पक्ष में निर्णीत किया जाता है।

19. <u>विचारणीय बिन्दु संख्या–2 व 3</u>

20. ये दोनों बिन्दु परस्पर अंतरवलित हैं। इसलिए इन दोनों बिन्दुओं पर साक्ष्य एवं विधि का विवेचन एक साथ करते हुये इन्हें निर्णीत किया जा रहा है।

21. प्रार्थी ने अपने कथनों में यह कहा है कि दिनांक 11.11.2019 को अनफेयर लेबर प्रेक्टिस अपनाते हुये उसकी सेवायें मौखिक आदेश से अवैध रूप से समाप्त कर दी गई। अधिनियम की अनुसूची–V के अनुसार किसी कर्मकार को सेवा से पृथक करना यदि उसके शोषण के उद्देश्य से हो या सदभाविक न हो तो अनुचित श्रमाभ्यास माना जावेगा। इसी प्रकार आकस्मिक अस्थाई श्रमिकों से अनेक वर्षो तक कार्य लिया जाना और उन्हें स्थाई न करना भी अनुचित श्रमाभ्यास कहा गया है। इस कसौटी पर साक्ष्य का परीक्षण करने पर यह प्रकट होता है कि प्रार्थी अगस्त, 2007 से विपक्षीगण के अधीन कार्य करना कहकर तो आया है किंतु इस तथ्य को वह प्रमाणित नहीं कर सका है। प्रदर्श P-1 पीओन बुक के अनुसार वह दिनांक 06.11.2009 से कार्यरत प्रकट होता है। इस प्रकार प्रार्थी स्वच्छ हाथो से अधिकरण के समक्ष अनुतोष हेतु प्रस्तुत नहीं हुआ है।

22. प्रार्थी का यह कथन है कि उसकी सेवा समाप्ति के पश्चात उसी के पद पर नये श्रमिक गोविन्द को लगाया गया। किंतु प्रतिपरीक्षा में प्रार्थी का कथन है कि उसकी सेवामुक्ति के बाद गोविन्द नाम के व्यक्ति को सेवा में रखे जाने का कोई दस्तावेज उसके पास नहीं है। इस कथन के प्रकाश में प्रार्थी यह प्रमाणित नहीं कर सका है कि उसकी सेवामुक्ति के बाद उससे कनिष्ठतर किसी भी व्यक्ति को अथवा गोविन्द नाम के व्यक्ति को प्रार्थी के स्थान पर विपक्षीगण ने नियुक्ति दी हो। माननीय उच्चतम न्यायालय ने अपने निर्णय रणवीर सिंह बनाम एग्जीक्यूटिव इंजीनियर पी.डब्ल्यू.डी. में यह अधिमत व्यक्त किया है कि जब कर्मकार की सेवा 240 दिन कार्य कर लेने के बाद अधिनियम की धारा 25 F का पालन न करते हुये समाप्त कर दी गई हो,–कर्मकार एक दैनिक वेतन भोगी तथा अस्थाई कर्मचारी हो तथा वह स्वंय से कनिष्ठतर व्यक्तियों को सेवा में रखे जाने का तथ्य सिद्व करने हेतु सन्तुष्टिप्रद साक्ष्य भी प्रस्तुत नहीं कर सका हो तो ऐसी स्थिति में अनुचित श्रमाभ्यास किये जाने का कोई निष्कर्ष नहीं लिया जा सकता। इस निर्णय में पारित मार्गदर्शन से विपक्षीगण द्वारा प्रार्थी की सेवा समाप्ति के समय किसी अन्य को नियुक्त करना, या प्रार्थी से कनिष्ठ किसी व्यक्ति को सेवा में बनाये रखना प्रमाणित नहीं होता है। अधिनियम की धारा 25 F के प्रावधानों का अनुपालन न करते हुये, की गई सेवा समाप्ति को किसी प्रकार अनुचित श्रमाभ्यास की श्रेणी में रखा जाना न्यायोचित प्रतीत नहीं होता है।

23. प्रार्थी ने अपने अभिवचनों और साक्ष्य में स्वयं की नियुक्ति पीओन/सब स्टाफ के पद पर अगस्त, 2007 में विपक्षीगण द्वारा किया जाना कहा है। किंतु इन कथनों को वह साक्ष्य से प्रमाणित करने में वह सफल नहीं हुआ है। प्रार्थी स्वीकार करता है कि उसे कोई नियुक्ति आदेश नहीं दिया गया और उसे अनूप सिंह नाम के व्यक्ति जो कि चाय की थडी चलाता है, ने सूचित किया था। विपक्षी बैंक भारत सरकार के दिशा निर्देशों के अंतर्गत संचालित भारत सरकार का उपक्रम है जिसके किसी भी पद पर नियुक्ति हेतु विहित चयन प्रक्रिया का प्रावधान है। प्रार्थी के कथनों के प्रकाश में उसकी नियुक्ति किसी स्वीकृत अथवा रिक्त पद के विरूद्व विपक्षी बैंक में नहीं की गई वरन् उसे दैनिक आवश्यकता अनुरूप कार्यो के लिए बैंक में रखा गया और भुगतान वाउचर्स के माध्यम से परिश्रमिक का भुगतान किया गया। जिसकी धनराशि पृथक–पृथक तिथियों पर पृथक दर्शायी गई है। इसलिए यह नहीं माना जा सकता है कि स्थाई पद के किसी भी कार्य के लिए विपक्षी बैंक ने किसी दैनिक वेतन भोगी श्रमिक को वर्षो तक नियुक्त रखकर अनुचित श्रमाभ्यास किया है। प्रार्थी की ओर से प्रस्तुत निर्णय जीतूभा खानसंगजी जडेजा बनाम कच्छ डिस्ट्रिक्ट पंचायत में माननीय उच्चतम न्यायालय ने कर्मकार से कनिष्ठ व्यक्तिओं को उसकी सेवा समाप्ति के समय सेवा में बनाये रखने तथा प्रबंधक द्वारा अभिलेखों को प्रस्तुत न करने के आधार पर सेवा समाप्ति को अवैध माना है। इस निर्णय में पारित विधि हस्तगत विवाद के तथ्यों से किंचित भिन्न है क्योकि प्रार्थी उससे कनिष्ठ व्यक्तियों को सेवा में बनाये रखने का तथ्य प्रमाणित नहीं कर सका है। इस विवेचन के उपरांत विचारणीय बिन्दु संख्या– 2 व 3 प्रार्थी के विरूद्व निर्णीत किये जाते है।

24. अनुतोषः–

25. विचारणीय बिन्दु संख्या–1 के विनिश्चय के प्रकाश में प्रार्थी की सेवा समाप्ति दिनांक 11.11.2019 अवैध प्रमाणित हुई है, किंतु विचारणीय बिन्दु संख्या– 2 व 3 के अंतर्गत प्राप्त किये गये निष्कर्ष के आधार पर विपक्षीगण द्वारा की गई सेवा समाप्ति अनुचित श्रमाभ्यास होना प्रमाणित नहीं पाया गया है।

26. सेवा समाप्ति अवैध पाये जाने के उपरांत सेवा में पुनः स्थापना एवं उचित स्थिति में विगत वेतन परिलाभ श्रमिक को दिलवाया जाना एक सामान्य अनुतोष है, किंतु सेवा में पुर्नस्थापन एवं विगत वेतन दिलवाया जाना एक स्वचालित अनुतोष नहीं होता। प्रत्येक प्रकरण के तथ्यों एवं परिस्थतियों के परीक्षण के पष्चात ही अनुतोष निर्धारित किया जाना चाहिये। माननीय सर्वोच्च न्यायालय ने निर्णय के.वी. अनिल मित्रा व अन्य बनाम श्री शंकराचार्य यूनिवर्सिटी ऑफ संस्कृत व अन्य में यह मार्गदर्शन दिया है कि सेवा में पुनः स्थापना एवं पारिणामिक लाभ का अनुतोष स्वतः ही यन्त्रवत प्रदान नहीं किया जा सकता। कर्मकार को क्या वैकल्पिक अनुतोष, प्रकरण के तथ्यों और परिस्थितियों के आधार पर दिया जा सकता है, यह विचार करने का क्षेत्राधिकार अधिकरण/न्यायालय को प्राप्त है।

27. माननीय उच्चतम न्यायालय ने रणवीर सिंह बनाम एग्जीक्यूटिव इंजीनियर पी.डब्ल्यू.डी. के निर्णय में यह कहा है कि जब अपीलार्थी कर्मकार एक दैनिक वेतन भोगी हो तथा स्थाई कर्मचारी नहीं हो– वह स्वयं से कनिष्ठतर व्यक्तियों को सेवा में रखे जाने का तथ्य भी प्रमाणित नहीं कर सका हो अनुचित श्रमाभ्यास किये जाने का भी कोई निष्कर्ष नहीं हो, तो ऐसी स्थिति में सेवा में पुर्नस्थापन किया जाना स्वचालित रूप में नहीं हो सकता तथा समुचित प्रतिकर एक उचित अनुतोष होगा।

28. प्रार्थी की सेवा समाप्ति विपक्षीगण द्वारा अधिनियम की धारा 25 F के प्रावधानों का अनुपालन न किये जाने के आधार पर ही अवैध प्रमाणित हुई है। इस स्थिति में यह दृष्टव्य है कि प्रार्थी को सेवा में वहाल करने पर विपक्षीगण के पास यह विकल्प निश्चित रूप से उपलब्ध रहेगा कि वह पुनः अधिनियम की धारा 25 F के प्रावधानों का अनुपालन करते हुये प्रार्थी को छंटनी के रूप में सेवामुक्त कर दें। प्रार्थी एक दैनिक वेतन भोगी आकस्मिक श्रमिक होना प्रमाणित हुआ है जिसे प्रतिदिन कोई निर्धारित वेतन का भुगतान नहीं किया जाता था। जैसा कि प्रदर्श P-16, पेमेन्ट वाउचर्स रजिस्टर से प्रकट होता है। प्रार्थी किसी स्थाई रिक्त पद के विरूद्व विहित चयन प्रक्रिया के अनुसरण में नियुक्त भी नहीं किया गया था। प्रार्थी को प्रतिदिन या मासिक निर्धारित दर से वेतन भुगतान किये जाने का प्रमाण भी नहीं मिला है।

29. माननीय उच्चतम न्यायालय ने अपने निर्णय सेक्रेटरी, स्टैट ऑफ कर्नाटक बनाम उमा देवी व अन्य एवं स्टैट ऑफ हिमाचल प्रदेश बनाम सुरेश कुमार वर्मा व अन्य में यह अधिमत व्यक्त किया है कि अस्थाई/संविदाजन्य/आकस्मिक दैनिक वेतन भोगी या तदर्थ रूप से नियुक्त कर्मचारी का अवषोषण, नियमितीकरण या स्थाईकरण लोक नियोजन की संवैधानिक योजना के परे है। इसलिए न्यायालय द्वारा जारी ऐसा निर्देश, चूँकि लोक नियोजन की दूसरी रीति उत्पन्न करता है, अनुज्ञेय नहीं है। जब किसी व्यक्ति को दैनिक वेतन पर चयन प्रक्रिया से परे नियुक्त किया गया हो, परियोजना समाप्त होने पर सेवा समाप्त कर दी गई हो तो ऐसी परिस्थिति में कर्मकार को पुनः नियुक्ति नहीं दी जा सकती। यदि रिक्त पद हो तो उन्हें नियमानुसार ही पूर्त किया जाना चाहिये। इसलिए, इन निर्णयों के प्रकाश में प्रार्थी को सेवा में पुनः स्थापित किये जाने का आदेश दिये जाने के स्थान पर प्रार्थी को एकमुश्त प्रतिकर का भुगतान करवाया जाना न्यायोचित प्रतीत होता है।

30. एक आकस्मिक दैनिक वेतन भोगी अकुशल श्रमिक को देय न्यूनतम वेतन की दर को विचारित करते हुये प्रतिकर का निर्धारण किया जाना उचित है। प्रार्थी ने सेवामुक्ति से अब तक स्वयं को बेरोजगार कहा है जिसका कोई खण्डन विपक्षीगण ने अपने अभिवचनों और साक्ष्य से नहीं किया है। प्रार्थी द्वारा की गई सेवा की अवधि, नियोजन की प्रकृति एवं प्रकरण की परिस्थितियों को दृष्टिगत रखते हुये इस अधिकरण के सुविचारित अधिमत से प्रार्थी को एकमुश्त 350,000/– रू. (अक्षरे तीन लाख पचास हजार रू.) प्रतिकर दिलवाये जाने से न्यायहित साधन हो सकेगा।

31. अतः दिनांक 11.11.2019 को विपक्षीगण द्वारा प्रार्थी की सेवामुक्ति को अधिनियम की धारा 25 F के अंतर्गत अवैध ठहराते हुये अपास्त किया जाता है। किंतु प्रार्थी को सेवा में पुर्नस्थापन एवं विगत वेतन परिलाभों के स्थान पर एकमुश्त 350,000/– रू. (अक्षरे तीन लाख पचास हजार रू.) प्रतिकर का भुगतान विपक्षीगण द्वारा किये जाने का आदेश दिया जाता है। विपक्षीगण इस प्रतिकर राशि का भुगतान दो माह की अवधि में प्रार्थी को करें, अन्यथा भुगतान किये जाने तक इस राशि पर 6 प्रतिशत वार्षिक ब्याज दर से ब्याज का भुगतान भी विपक्षीगण करेगें।

32. अधिनिर्णय की एक प्रति अधिनियम की धारा 17 (1) के अनुसरण में प्रकाशनार्थ प्रेषित की जावें।

राधामोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 9 अगस्त, 2024

का.आ. 1566.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **कोलकता** के पंचाट (24/2019) प्रकाशित करती है।

[सं. एल-12011/47/2019- आई आर (बी-II)]
सलोनी, उप निदेशक

New Delhi, the 9th August, 2024

S.O. 1566.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.24/2019*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank and their workmen.

[No. L-12011/47/2019– IR(B-I1)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO.24 OF 2019

Parties : Employers in relation to the management of

Syndicate Bank/ Canara Bank

AND

Syndicate Bank Employees' Union

Appearance:

On behalf of the Syndicate Bank/Canara Bank: Smt. Zinia Mukherjee, Ld. Advocate.

On behalf of the Syndicate Bank Employees' Union: Mr. Kamalesh Jha, Ld. Advocate.

Dated: 10th July, 2023

A W A R D

By order No. L-12011/47/2019 IR (B-II) dated 02-12-2019, the Govt. of India, Ministry of Labour in exercise of power conferred under section 10(1) (d) and sub-section (2A) of the Industrial Dispute Act, 1947 has referred the following issues for determination by this Tribunal :-

"Whether the action of the management of Syndicate Bank, Regional Office, Kolkata by not releasing the Overtime Allowance to the workmen staff at the time of demonetization in the month of November, & December, 2016 is legal and/or justified? If not, what relief the workmen is entitled to?"

The facts necessary for determination of the above issue in brief are that Syndicate Bank a nationalised bank has been amalgamated with Canara Bank in the year 2020 and at present it is known as Canara Bank w.e.f. April,2020.

However, the service conditions of banks' employees were/are governed by Sastri Awards, Desai Awards and bipartite settlements that have been executed between IBA and unions of bank employees. That as per bipartite settlement bank employees are entitled to draw overtime allowance for doing works beyond their working hours.

That Central Govt. on the recommendation of the Central Board of RBI vide notification no.3407(E) dt. 08-11-2016 declared the then existing series of the Bank Notes of the denomination value of Rs.500 and Rs.1,000 to be ceased to be legal tender with effect from 09-11-2016 and thus bank notes of Rs.500/- and Rs.1,000/- denomination issued by RBI till 08-11-2016 were withdrawn.

So, those bank notes of Rs.500/- and Rs.,1000/- denominations were exchanged for same value at any of the 19 offices of the Reserve Bank of India or at any of the Bank branches or at any Head Post Office or Sub-Post Office. The time for exchange was allowed up to 30th December, 2016. Initially restriction was also imposed for exchange per

person in cash up to Rs. 4,000/-. During the period of denominations RBI issued several instructions to deal with the situation, later maximum value of Rs.50,000/- of Old High Denomination Bank Notes were allowed to be deposited on proper proof of identity of the tenderer.

That on announcement of demonetisation on 09-11-2016 there was a mad rush of anxious customers and general public to deposit/ exchange the notes of Rs.500/- and Rs.1,000/-. The staff of the bank were pressed hard and had to work beyond official working hours to cope up with the increased work load and to control and pacify the disgruntled customers and general public. The bank had to extend its working hours to meet the situation, set up extra counters to meet the emergency situation. Thus, demonetisation caused hardship not only on the bank staff but also to customers and general public at large. There was a failure to recalibrate the ATMs for longer period. Sometimes the bank staff to bear the rage of the customers and general public.

That the situation created by the demonetisation made the employees of the bank worked beyond their schedule hours or working hours in between 09-11-2016 to 30-11-2016. Even they were made to work on holidays i.e. on 12th and 13th November, 2016. That considering the sudden increase in the volume of work load due to demonetisation, All India Bank Employees Association and All India Bank Officers Association brought to the notice of the Chairman of Indian Bank Association regarding the problems faced by them vide letter dt.14-11-2016. The Indian Bank Association took up the matter with Govt. of India, Ministry of Finance and had issued an adversary dt.14-11-2016.

That the situation was such that staff and employees of the bank had to work on verbal instruction of its branch head or departmental head and work beyond the working hours mentioned in the bipartite agreement. Unfortunately, they were paid over time only for two days i.e. for 12th and 13th November, 2016 which were second Saturday and Sunday but not for the other working days where they were made to work beyond working hours.

That it raised the dispute before the Assistant Labour Commissioner, Kolkata as regional Head Office failed to clear the claim of the overtime wages for workmen/staff of different branches during the demonetisation period. Not only that, the bank issued an order for refund of the overtime wages paid to some of the staff.

Therefore, it has prayed that Syndicate Bank, Regional Office, Kolkata be directed to release the overtime wages to all the workmen staff during the period from 09-11-2016 to 30-12-2016 and also in view of bipartite settlement dt.19-102-1966 and pay interest @ 6% on such arrear overtime.

That bank contested the claim of the workmen/staff by filing written statement, where it has alleged that Syndicate Bank has been amalgamated with Canara Bank in the year 2020 and at present Syndicate Bank is known as Canara Bank. It has also admitted that by virtue of Indian Bank Association's letter dt.08-11-2017 the workmen are entitled to receive payments for overtime work as per the provision of bipartite settlement, if the workman is required to do overtime works as decided by the management of the bank.

It has also admitted that due to demonetisation there was a heavy rush in the bank for exchange of the demonetised bank notes of Rs.500/- and Rs.1,000/- and bank had to open many more extra counters for acceptance and exchange of heavy notes. That bank had to keep its branches open on holidays i.e. on second Saturday and Sunday falling on 12th and 13th November,2016. Thus, the bank paid overtime allowances to the workmen who worked on those two holidays.

However, it has denied that it never asked its employees to work beyond office hours during demonetisation period as cash counter were closed at its normal time i.e. at 4 p.m. That no extra work were done by the employees of the bank in between 9th November, 2016 to 30th December, 2016, except on 12th and 13th November,2016. Cash counters of the bank worked till 4 p.m. and not beyond that. Therefore, it has alleged that claim made by the union is unfounded and they are not entitled to get any relief.

That the union in its rejoinder categorically denied the contention of the bank the branches of Syndicate Bank were not affected by demonetisation. The bank used to function at its normal banking hours and no one had to work beyond banking hours.

The union in support of its claim and case has examined Sri Sirsendu Das, the State Secretary of Canara Bank Workmen Employees Union, West Bengal as W.W.1 and through him following documents have been exhibited :-

1. Letter of authority of W.W.1 as Exhibit–W-1.

2. Copy of circular of RBI dt.08-11-2016 in respect of demonetisation along with annexures in 19 pages as Exhibit –W-2.

3. Copy of joint unions' letter dt.14-11-2016 to the Chairman, Indian Banks' Association expressing problems faced by the employees and officers of the banks due to undue pressure of work caused by demonetisation scheme, as Exhibit –W-3.

4. Copy of Ministry of Finance's letter dt.14-11-2016 to the Chairman, Indian Bank Association as Exhibit –W-4.

5. Chapter-14 of bipartite settlement dt.19-10-1966 relating to overtime allowance in 6 pages as Exhibit –W-5.

6. Copy of union's letter dt.27-02-2017, 28-03-2017 and 18-07-2018 to the Dy. General Manger, Syndicate Bank, Regional Office and to the Regional Manager, Kolkata, as Exhibit –W-6, 6/A and 6/B.

7. Copy of union's letter dt. 07-9-2018 to DLC (C), Kolkata regarding non-payment of overtime allowance to the staff for handling demonetisation related work as Exhibit –W-7.

8. Copy of union's letters dt.28-03-2019, 29-07-2019 and 20-08-2019 to ALC (C) relating to non-payment of overtime by the management of the bank as Exhibit –W-8, 8/A and 8/B.

9. Copy of letter of Branch Manager, Chinsurha Branch addressed to D.G.M., Regional Office, Kolkata dt.27-11-2016 as Exhibit –W-9.

10. Copy of letter of Branch Manager, Chaltia Branch, Berhampore to DGM, Kolkata Region dt.06-12-2016 as Exhibit –W-10.

11. Copy of letter dt. 13-12-2016 of Branch Manager, Jadavpur Branch addressed to DGM, Kolkata as Exhibit –W-11.

12. Copy of letter dt. 17-12-2016 of Branch Manager, Sibpur Branch addressed to Regional Manager, Kolkata as Exhibit –W-12.

13. Copy of letter dt. 19-12-2016 of Branch Manager, Tollygunj Branch addressed to DGM, Kolkata as Exhibit –W-13.

14. Copy of letter dt. 27-12-2016 of Branch Manager, TDB College Raniganj Branch addressed to DGM, Kolkata as Exhibit –W-14.

15. Copy of letter dt. 30-12-2016 of Branch Manager, Barasat Branch addressed to DGM, Kolkata as Exhibit –W-15.

16. Copy of letter dt. 03-02-2017 of AGM addressed to DGM, Kolkata as Exhibited –W-16.

17. Copy of inter-office memorandum dt.23-03-2017 of DGM addressed to Branch Manager, Raiganj Branch, Kalupur Branch and Sitalgram Branch seeking recovery of OT paid to them, marked as Exhibit-17, 17/A and 17/B.

18. Copy of memorandum dt.31-03-2017 of Sitalgram Branch, Birbhum, marked as Exb.W-18.

19. Copy of representation letter of staff of Siliguri Branch dt.30-03-2017, marked as Exb.W-19.

20. Copy of Raiganj Branch's letter dt.27-03-2017 to Sri Abhijit Datta, Sri Amit Kumar Paul and Sri Rahul Verma, marked as Exb.W-20, 20/A and 20/B.

21. Copy of IBA's letter dt.08-11-2017 to all members of the association, marked as Exb.W-21 and

22. Conciliation failure report dt.21-10-2019, marked as Exb.W-22.

On the other hand the management of Canara Bank has examined Sri Abhisekh Krishna, Senior Manager, Circle Office, Kolkata as M.W.1 but no documents whatsoever have been produced by the management of the bank in support of its defence case.

It is fresh in the memory of all the citizens of India, the sudden announcement of demonetization of the currency notes of Rs.500/-and Rs.1, 000/- denominations w.e.f. 09-11-2016 had taken a back the entire citizens of country with unexpected surprise and for which the citizen had not only suffered stress, anxiety, mental agony and uncertainty but also had to stand in a long queue under a scorching heat and in the process many of the citizens had lost their lives also.

On the other hand, banks are the major institutions affected by demonetisation. Consequently, the employees of the banking sectors too had to suffer brunt of the unforeseen emergency situation created by the demonetisation being the sole authorised agency of the RBI to handle the entire exchange scheme. They not only had to face the rage, anger, frustration of the customers or of those public coming to the branches for exchange of those banned currency notes but also had to work for hours together beyond their normal working hours putting their health in stake. Such unforeseen emergency situation also disrupted normal regular function or operation of the bank.

No particular Circulars or guidelines issued by the RBI or by the Chairman of the Indian Bank Association during the period from 09-11-2016 to 30-12-2016 have been produced from the side of the management of the bank

to prove what kind of additional facilities were provided at bank to tackle the emergency situation created by demonetisation, how to tackle increased work load and what pecuniary benefits was provided to those employees who were made to work beyond their regular normal working hours and for distress and anxiety they suffered causing risk to their health.

Further, nothing has come on record to prove which categories of staff were given the additional task of exchange, whether it were only the Cashiers who deals with cash or some other staff too were given the task of exchange and in case the regular Cashiers were given the work of exchange then in their place who looked after the regular cash counters to handle regular business of the bank.

It is a matter of common knowledge bank employees' shouldered worst impact of demonetisation and endured hardship of extended working hours and customers' anger. So, it appears RBI had announced the decision of demonetisation without any preparation. Most of the bank were not able to discharge other banking services while exchanging the banned currency note. So, one cannot deny that employees of the bank did not do overtime duty during demonetisation.

From the materials on record it is seen the situation was such the Branch Managers or the authority concerned too had failed to issue order specifying names of particular staff of the branch who were specifically assigned to handle the emergency situation created by the demonetisation.

However, Exb.W-9 to Exb. W-16, (which shall be discussed in details in later part of this award) prove that Branch Managers of different Branches of Syndicate Bank, had assigned certain section of bank employees to complete the demonetisation process and for which they have recommended names of those staff mentioned in those exhibited letters addressed to Dy. General Manager, Regional Office, Kolkata for sanction and approval of payment of overtime for working during demonetisation. Those exhibited documents prove that to tackle the emergent situation created by demonetisation not all the employees of the banks were engaged but only a certain number of employees were given the task of exchange to make Govt. of India's demonetisation scheme successful within a period of 09-11-2016 to 30-12-2016. More so, it is admitted fact for working extra hours/overtime, there is a specific provisions for payment of overtime wages in the bipartite settlement.

Thus, this Tribunal is unable to accept the contention of the bank that it engaged its employees only on12th and 13th November, 2016 as per RBI guidelines, which were holidays being second Saturday and Sunday for demonetisation process, but it is vivid in the memories of the citizens of India, in order to exchange the banned notes they had to stand in queue for days together to exchange their hard earned money and not only on those two days which were holidays as alleged by bank.

Further, the Tribunal is unable to accept the contention of the bank that it did not have to handle the exchange of banned currency notes and as such its employees were not required to do overtime work, or that during demonetisation period Syndicate Bank was not affected and its employees were only required to do the normal duty and that too within normal banking hours. But, Exb. W-4 shows the Govt. of India, Ministry of Finance had approved the bank staff should be deployed on shift basis, extra care should be given to female staff working late hours and addition of extra infrastructure should be built to handle the rush of demonetisation. Then, a question arises if the Syndicate Bank was not affected by demonetisation then why Ministry of Finance had to issue Exb.W-4 to it for deploying staff on shift basis, extra care for female staff working late hours and addition of extra infrastructure to handle the rush of demonetisation?

That apart, Exb. W-3 dt. 14-11-2016 reflects the anguish of the entire employees of the bank of both workmen and officers categories in implementation of the Govt. of India's scheme to unearth black money. It reflects how banks were facing public wrath for not being able to exchange the banned currency for want of supply of only legible currency notes of Rs.100/- and new denominations currency notes of Rs.2,000/- and Rs.500/- by RBI. That ATM could not be functioned within two days as stipulated in the guidelines issued by the RBI for want of calibration to accommodate new denominations currency notes of Rs.2,000/- and Rs.500/- of different sizes.

Further, they have informed that the entire employees of the bank have to work beyond their normal expected capacity and depriving themselves their minimum convenience like lunch etc. and till late in night. The branches running with the short staff were the worst sufferer. That work had to be distributed in order to lessen the burden exclusively on the staff who directly handled cash, currency, chest etc. They have expressed that staff should be deployed on shift basis to handle the extra burden and to ensure payment for extra works along with monthly salary, necessary machines be provided to detect fake notes and separate arrangements may be made to handle senior citizens.

In view of the above, Syndicate Bank cannot deny or say that none of its branches had to tackle demonetisation rush or had to handle demonetisation process and as such none of its staff had to work extra hour and all its branches discharge its normal business within normal banking hours.

Further, this Tribunal is of view the bank cannot avoid its responsibility by merely saying that the employee who is assigned to do a particular work is required to finish the work within the schedule working hours and if the

employees fails to complete his task then he is bound to complete the same by remaining in the bank beyond working hours and for which the employee is not entitled to claim for doing extra works beyond office/banking hours even during demonetisation period.

Now, let see whether the union is entitled to get overtime wages during the demonetisation period from 09-11-2016 to 30-12-2016 in respect of all employees of the bank who comes within the category of workmen i.e. subordinate staff, in the category of Clerical cadre, office attendant and Sweeper etc. or the bank is bound to pay overtime wages to all its workmen for demonetisation period?

It is true, the bank has failed to produce list of employees who were engaged to handle the work related to exchange of banned currency notes during demonetisation from 09-11-2016 to 30-12-2016 and their duty hours. It is the duty of the management of the bank/employer to allot duty to its staff during demonetisation period by issuing an office order and which is absent in the present case. Nonetheless, from Exb.W-9 to Exb.-W-16 it can be gathered the bank did not engage all its staff of whatever category during demonetisation period to handle the unforeseen situation or to handle demonetisation process. That different branches engaged certain number of its employees to handle the demonetisation process and not all the employees/workmen of all branches of Syndicate Bank, coming under the jurisdiction of Regional Office, Kolkata as claimed by the union.

No doubt, vide Exb. W-6 series, the union has claimed that all the employees of the bank were made to work beyond their schedule working hours and had to sit late hours at branches for official works w.e.f. 10-11-2016 till 30-11-2016. That bank had asked all its employees to extend their service by overstaying in their branches. That some of the staff of the Regional Office, Kolkata were also sent to different branches to extend their service. That lady staff were also asked to stay late night, but they were only paid overtime for working only on holidays i.e. on 12th and 13th November, 2016. It is also seen that bank had demanded refund of the overtime paid to its employees. That on such issue the union had raised an industrial dispute before the Labour Commissioner vide Exb.W-7, Exb.W-8 and Exb.-W-8/A.

Exb.W-9 shows Branch Manager, **Chinsurah Branch** had forwarded the **overtime claim** for doing work during demonetisation period **submitted by four clerks of its branch** to the DGM, Regional Office, Kolkata for necessary grant of overtime wages.

Exb.W-10 shows Branch Manager**, Chalita Branch** had forwarded the **representation of workmen for overtime allowances for doing extra hour of works during demonetisation period on 10th, 11th, 15th and 16th November, 2016** to the DGM, Regional Office, Kolkata for necessary grant of overtime wages along with **the calculation sheet**, but union has failed to furnish the copy of representation of the staff and the calculation sheet to prove that all workmen category staff of the branch did extra hour works during the above mentioned dates.

Exb.W-11 shows that shows Branch Manager, **Jadavpur Branch** had forwarded the **overtime claim sheet submitted by workmen**/staff for demonetisation work in the **month of November, 2016** to the DGM, Regional Office, Kolkata for necessary grant of overtime wages along with the claim sheet, but union for reason known to it has failed to furnish the claim sheet to prove that indeed all workmen category staff of the branch did extra hour works during the above mentioned period to substantiate its claim.

Exb.W-12 shows that shows Branch Manager, **Sibpur Branch** had forwarded the **overtime claim** sheet submitted by workmen/staff for demonetisation work **for the period from 10-11-2016 to 31-11-2016 in respect of three clerks, one attendant and one part time sweeper** to the Regional Manager, Regional Office, Kolkata for necessary grant of overtime wages. Such letter proves that all workmen category staff of the branch were not engaged to handle demonetisation process as claimed by union.

Exb.W-13 shows that shows Branch Manager, **Tollygunj Branch** had forwarded the **overtime claim sheet submitted by workmen**/staff for demonetisation work **for period from 10-11-2016 to 30-11-2016** to the DGM, Regional Office, Kolkata for necessary grant of overtime wages. It also discloses that the staff of the branch were made to work extra three to four hours up to 8-00 p.m. to 9-00 p.m. and requested the DGM to recommend claim for extra three hours overtime during the above mentioned period. It also discloses payment being made towards overtime only for 12th and 13th November, 2016. The union has failed to furnish the copy of claim sheet to prove all workmen category staff of the branch were engaged to handle demonetisation works from 10-11-2016 to 30-11-2016.

Exb.W-14 shows that shows Branch Manager, **TDB College Branch, Ranigunj** had forwarded the **overtime claim sheet submitted by four clerk and one attendant for demonetisation work** and certified claim made by them to be genuine to the Dy. General Manager, Regional Office, Kolkata for necessary grant of overtime wages. Such letter proves that all workmen category staff of the branch were not engaged to handle demonetisation process as claimed by union.

Exb.W-15 shows that shows Branch Manager, **Barasat Sangam Market Branch** had forwarded the **overtime claim along with calculation sheet of clerks and sub-staff for doing overtime late hours duty during demonetisation work for the period from 10-11-2016 to 30-11-2016** to the Dy. General Manager, Regional Office,

Kolkata for sanction of overtime wages, but union failed to annexe the calculation sheet to prove that all workmen category staff of the branch were engaged to handle demonetisation process as claimed by it.

Exb.W-16 shows that shows Branch Manager, **N.S. Road Branch** had forwarded the overtime claim sheet along with calculation sheet submitted by workmen/staff for demonetisation work for the period from 10-11-2016 to 19-11-2016 to the Dy.General Manager, Regional Office, Kolkata for necessary grant of overtime wages along with necessary guidance, but union has failed to annex the claim sheet along with calculation sheet for the period from 10-11-2016 to 19-11-2016 to prove all workmen of the branch were engaged during demonetisation to handle the extra hour works.

Thus, from the above exhibited documents it is seen that Branch Managers, the best persons who can say which of his/her staff did overtime work during demonetisation period appears to have forwarded their claims for overtime to the Dy. General Manager, Regional Office, Kolkata for necessary sanction. So, they may be able to draw bills for overtime and make payment to those concerned workmen.

From the above exhibited documents it is seen that different branches have made claim for doing extra overtime work during demonetisation not for entire period from 09-11-2016 to 30-12-2016 as claimed by the union. Further, Exb.W-21 shows workmen who did overtime work during demonetisation were entitled to receive payment for such overtime work as per the provisions of the bipartite settlement.

Therefore, this Tribunal is of view the union is not entitled to get overtime allowance/ wages for all workmen categories of employees posted at different branches of Syndicate Bank, coming under Regional Office at Kolkata, for demonetisation period from 09-11-2016 to 30-12-2016. The bank is liable to pay overtime allowances for doing extra work only to those staff who were actually assigned by the Branch Managers to handle the demonetisation process and that too only for those days on which they had worked overtime after consulting the official record.

That Exb.W-17, W-17/A, W-17/B, W-18, W-19, W-20, W-20/A and W-20/B show that Syndicate Bank, Regional Office, Kolkata by issuing those letters in the year 2017 directed Branch Managers of Raigunj Branch, Kalupur Branch, Sitalagram Branch, Siliguri Branch, to Mr. Abhijit Dutta, Sri Amrit Kumar Paul and Sri Rahul Verma all employees of N.S. Road Branch, were directed to refund the amount paid to workmen towards overtime payment for working extra hours during demonetisation period.

Exb.W-22 shows on receiving such refund notices, the union has raised an industrial dispute before Labour Commissioner, which resulted in failure and thereby this reference.

Exb.W-9 to W-16 prima facie show the concerned Branch Managers who had assigned extra work during demonetisation period had forwarded the claim of overtime of the concerned staff to the Dy. General Manager, Regional Office, Kolkata for approval and sanction. In some of those exhibits the Branch Managers had certified the claim made by concerned workmen to be genuine. In that case, this Tribunal is of view the management of the bank cannot deny payment of overtime to those workmen who had indeed put their extra labours during chaotic situation created by demonetisation and more so, Exb.W-21 also corroborates that bank is bound to pay overtime as per bipartite settlement to those employees who were asked by the management to do the extra work which involves overtime. Therefore, the bank cannot deny overtime payment to those workmen who had indeed put extra work and worked for extended period during demonetisation period and bank cannot say that extra work created by demonetisation falls within the normal duty of a Cashier or a staff of the bank.

Now, question arises whether the bank can ask for refund of the overtime payment by issuing Exb.W-17 to W-20/B?

The law is settled, any wrong payment, if any, made without the fault of the part of workmen and when no undertaking of refund was obtained from the workmen at the time of payment can be recovered from the workmen. In the present case the claims of the workmen were forwarded by the concerned Branch Managers to the Dy.General Manager, Regional Office, Kolkata for approval and sanction. Therefore, payment, if any, made to those workmen towards overtime for demonetisation period had been made after obtaining approval and sanction from the Dy. General Manager, Regional Office, Kolkata. So, Dy. General Manager, Regional Office, Kolkata cannot demand for refund of the payment approved and sanctioned by him. Therefore, this Tribunal holds that Exb.W-17 to W-20/B to be illegal and as such those workmen are not bound to refund of payment of overtime for doing extra works during demonetisation period already received by them wrongly or rightly.

Considering the facts and circumstances of the case and the discussions made above, this Tribunal is of view that all bank staff falling in the category of workmen are not entitled to get overtime payment for demonetisation period except those workmen who were assigned by the management of the bank to handle demonetisation process and they too are entitled to get overtime only for those days they worked overtime and not for the entire period from 09-11-2016 to 30-12-2016 as claimed by the union. Each Branch of Syndicate Bank falling within the Regional Office, Kolkata is directed to make payment only to the concerned workman engaged by it during demonetisation period and who had worked overtime and that too only for those days on which they had worked overtime, after

consulting official records maintained in the branch during demonetisation period. The payment for overtime should be made under the provisions of bipartite settlement. The bank's claim for refund is held illegal.

Accordingly, Reference Case No. 24 of 2019 is disposed of and award to that effect is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 9 अगस्त, 2024

का.आ. 1567.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **इलाहाबाद बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **कोलकता** के पंचाट (03/2001) प्रकाशित करती है।

[सं. एल-12011/189/99-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 9th August, 2024

S.O. 1567.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.03/2001*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workmen.

[No. L-12011/189/99– IR(B-1I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 03 OF 2001

Parties: The Management of Allahabad Bank

Versus

Shri Moni Kumar Chettry and ten others

Appearance:

On behalf of Allahabad Bank: Absent.

On behalf of the Workmen: Mr. Sanjit Chatterjee, Authorised Representative.

Dated: 1st July, 2024

A W A R D

By order No. L-12011/189/99 –IR (B-II) dated 29-01-2001, the Central Government, Ministry of Labour in exercise of power conferred u/s 10 (1) (d) and sub-section (2A) of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

"Whether it is a fact that Sh. Moni Kumar Chettry and 10 other disputants (whose names are given as under) have worked 240 days or more in12 consecutive months between the period 1st January, 1982 and 31st October, 1992 with the management of Allahabad Bank and if so whether they became entitled to be permanently absorbed by the bank in terms of memorandum of settlement of 1992? If not, what relief are they entitled to?"

The names of those eleven alleged workmen given in reference order are as follows:-

1.	Sh. Moni Kumar Chettry	2. Sh. Subrata Banerjee
3.	Sh. Narayan Dey	4. Sh. Ranjan Ghosh.
5.	Sh. Tanu Roy	6. Sh. Nishakar Sankhua
7.	Sh. Anil Fadikar	8. Sh. Banshi Sarkar.

9. Sh. Bimal Kumar Bose 10. Sh. Banshi Rajak and

11. Sh. Santanu Sarkar.

It is the case of those 11 persons/alleged workmen that there was a memorandum of settlement executed between Allahabad Bank and All India Allahabad Bank Employees Coordination Committee on 17-11-1992 u/s 2(p) and 18(1) of the Industrial Dispute Act, 1947 for absorption of those persons who were engaged as temporary full time basis Peon cum Farash/sweeper and who have worked for 240 days or more in a consecutive 12 months between the period from 01-01-1982 to 31-10-1992. That those temporary full time basis Peon cum Farash/ sweeper who have completed 90 or more days in between the period from 01-10-1982 to 17-11-1992 were to appear in the selection process for consideration of their recruitment in the service of the bank as a Peon cum Farash/ Sweeper as the case may be.

That in pursuance of such settlement 21 daily rated Peons of erstwhile United Industrial Bank Ltd. were absorbed, but Allahabad Bank have failed to do so. However, the management of Allahabad Bank on the basis of a memorandum of settlement singed on 10-03-1995 absorbed 16 part time Sweeper/Office Peon cum Farash of different branches, offices, head office and 3 canteen employees, whose names appeared in the said memorandum of settlement.

Further, four Sweepers were also absorbed against the permanent vacancies who were working at International, Mukul Bose Road, Jadavpur Central Park and Aswinini Dutta Road Branches of the bank.

That present workmen who have rendered more than 240 days of service in a calendar year in between 01-01-1982 to 31-10-1992 were not extended the benefit of the above settlements. Therefore, they have prayed for their absorption in the permanent service of the bank with full back wages on and from 10-03-1995.

The bank had put appearance and contested the case by filing written statement and where it has alleged that there exists no industrial dispute between the bank and those alleged workmen. That there was no conciliation proceeding before the dispute being referred to this Tribunal for adjudication. Therefore, the memorandum of settlement dt. 17-11-1992 cannot be the basis of an industrial dispute.

That Allahabad Bank being a nationalised bank is governed by its own recruitment rules and which stipulates that recruitment for subordinate cadre should be through Employment Exchange or by notification in newspapers etc. by holding test and interview. That the persons named in the order of reference have no right to claim appointment in the bank bypassing the recruitment rules. That no Officers of the bank are empowered to engage an individual person to work on temporary basis against a permanent vacancy of a Peon cum Farash.

That in view of the approach paper forwarded by the Govt. of India, Ministry of Finance dt.16-03-1990, a memorandum of settlement dt.17-11-1992 was executed with the recognised union of the bank i.e. All India Allahabad Bank Employees Coordination Committee u/s 2 (p) and 18(1) of the I.D.Act as a onetime full and final settlement of all the claims and dispute in the matter of persons engaged on temporary basis in the subordinate cadre.

Accordingly, applications were invited from the eligible persons, by issuing internal circulars and also by making advertisements in the employment news and regional news daily. That none of those 11 claimants have availed the opportunity and therefore they are stopped from making any claim which is after-thought, non-germane and speculative in nature. They intend to procure a permanent service in the bank through back door entry and by practicing fraud. That those 11 applicants were never engaged by the bank as Peon cum Farash and that too against permanent vacancies. Thus, it has alleged the claim of the applicants being speculative is liable to be rejected.

Those applicants in their rejoinder have alleged that they have moved the Hon'ble High Court in writ jurisdiction and the Hon'ble High Court was pleased to uphold existence of an industrial dispute between them and management of bank and directed Govt. of India to refer the grievances of those 11 applicants for redressal to Central Govt. Industrial Tribunal, Kolkata.

That those 11 applicants having put more than 240days of continuous service to the different branches of the bank in a calendar year are entitled to absorption and regularisation in the permanent posts of subordinate staff of the bank.

Therefore, they have prayed for rejection of the contention of the bank.

Those workmen in order to prove their case have examined among them Sri Tanu Roy, as W.W. 1, Sri Bimakl Kumar Bose as W.W.2 and Sri Subrata Banerjee as W.W.3.

That record shows that management has filed evidence in chief on affidavit of one Sri Tapan Kumar Gayen, one of the Officers of Allahabad Bank, Zonal Office, Kolkata Metro but has failed to tender his evidence and produced him for cross examination by the workmen. Therefore, such evidence of Sri Tapan Kumar Gayen is not taken into consideration for determination of the present dispute.

The order sheet dt.25-06-2007 shows that following documents produced from both sides have been marked as exhibits on formal proof being dispensed with.

(1) The memorandum of settlement dt.17-11-1992 between bank and AIABCC as Exb.W-1,

(2) Circular dt.06-08-1990 of the Ministry of Finance, Banking Divison, New Delhi as Exb.W-2,

(3) Memorandum of Settlement dt.10-03-1995 as Exbhibit-W-3 and

(4) Copy of letter dt. 25-08-1987 of Manager, Santipur Branch as Exb. W-4.

(a) Copy of Govt. of India, Ministry of Finance circular dt.06-08-1990 as Exb.M-1,

(b) Memorandum of Settlement dt.17-11-1992 as Exb.M-2,

(c) Guidelines for recruitment procedure (incomplete) in eight pages as Exb.-3,

(d) Order of the Hon'ble High Court dt.22-09-2000 as Exb.M-4 and

(e) Circular dt.08-02-1993 issued by Allahabad Bank, Head Quarter as Exb.M-5.

Perused the oral evidence of the three alleged workmen namely Sri Tanu Roy, Sri Bimal Kumar Bose and Sri Subrata Banerjee. They in their evidence have merely stated working for more than 240 days in a calendar year as a part time subordinate staff in different branches of Allahabad Bank in between 1982 and 1992 and also thereafter, but none of them was able to substantiate their such claim by producing cogent documentary evidence such as attendance register, payment vouchers or any such document from where it can be seen indeed they were engaged by Allahabad Bank to work at its different branches as a part time subordinate cadre staff on temporary basis or as a daily rated worker before 1992 and after 1982 and they were deprived of the benefit of settlement dt. 17-11-1992 or 10th March, 1995 despite having required qualification. No doubt Exb.W-4 shows that Sri Bimal Kumar Bose and Sri Banshi Sarkar were working as temporary Peon cum Farash at Santipur Branch of Allahabad Bank for more than three years on 25-08-1987. Such letter speaks about payment being made to them by vouchers through permanent employees of the branch, but they were unable to produce vouchers to substantiate the contents of Exb.W-4.

Thus, nothing is there in the record apart from oral evidence of those three witnesses to prove that there existed relationship of employer and employee in any form whatsoever in between those 11 persons/ alleged workmen and Allahabad Bank at any point of time. Therefore, this Tribunal is of view in the absence of proof of existence of relationship of employer and employee in between the bank and those 11 persons, question of existence of an industrial dispute between them does not arise.

In fact it appears that those 11 persons have raised the present industrial dispute for deprivation of absorption in the regular posts of subordinate cadre of Allahabad Bank on the basis of the alleged memorandum of settlement which took place on 17-11-1992 and by virtue of which Allahabad Bank had absorbed those temporary employees completing 240 days in consecutive 12 months in between the period from 01-01-1982 to 31-10-1992 and those who have worked for more than 90 days in between 01-01-1982 to 31-10-1992 and cleared the selection process. Therefore, this Tribunal is of view the claim and case of the applicants appear to be speculative based on the settlement dt.17-11-1992 and when they have failed to prove existence of employer-employee relationship between them and the bank.

That apart, the Hon'ble High Court in State of Karnataka –vs- Uma Devi & Ors., AIR 2006 SC 1806 held ""There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."

That Hon'ble Supreme Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193 has considered the scope of regularisation, of irregular or part time appointment and held that even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right. Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates. Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction

for absorption, regularisation or permanent continuance of part-time temporary employees. Part-time temporary employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part time temporary employees.

In the present case those 11 applicants or alleged workmen have failed to prove their service with Allahabad Bank in any capacity prior to execution of memorandum of settlement dt.17-11-1992 or existence of sanctioned vacant posts in the subordinate cadre against which they are seeking absorption or they used to work against the sanctioned vacant posts.

Therefore, in view of the above the present reference is not maintainable being speculative and alleged workmen are not entitled to get any relief. Accordingly, Reference Case no. 03 of 2001 is dismissed and an award to that effect is passed

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 9 अगस्त, 2024

का.आ. 1568.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **यूको बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **कोलकता** के पंचाट (20/2019) प्रकाशित करती है।

[सं. एल-12011/36/2019- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 9th August, 2024

S.O. 1568.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.20/2019*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen.

[No. L-12011/36/2019– IR(B-1I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 20 OF 2019

Parties: Employers in relation to the management of

The Management of UCO Bank

AND

Their Workman Tarakeswar Rewani and another

Appearance:

On behalf of the UCO Bank: Mr. Sachetan Ghosh, Ld. Advocate

On behalf of the Workmen : Mr. Suvadip Bhattacharjee, Ld Advocate

Dated: 13th June, 2024

A W A R D

Govt. of India, Ministry of Labour vide Order No. L-12011/36/2019- IR(B-II) dated 04-10-2019 in exercise of the power conferred under section 10(1)(d) & sub section (2A) of the Industrial Dispute Act, 1947 has referred the following dispute to this Tribunal for adjudication.

"Whether the action of the management of UCO Bank, Main Retail Branch, 10, B.T.M. Kolkata in terminating the services of Sh. Tarakeshwar Rewani & Sh. Monoj Kumar, Casual Safai Karmachari (working for more than 13 years) from the last month of 2014 and non-regularisation of their services whereas services of their

juniors Sh. Sukanta Ghosh and Sh. Prabir Chatterjee, Casual Safai Karmachari were regularised, is legal and justified? If not, what relief the workmen are entitled to?"

The materials on record show the present reference case has been pursued only by workman Sri Tarakeshwar Rewani and not by his co-worker Sri Monoj Kumar. Therefore, Sri Tarakeshwar Rewani in his claim statement has stated that he was engaged by the bank as a Safai Karmachari on 14-10-2001. That he was never issued any appointment letter. He was asked to do not only job of a Sweeper but some time as per the need of the bank he was also assigned to do the job of a Messenger. That he discharged his duty sincerely and diligently from the date of his appointment i.e. on 14-10-2001 till 31-12-2014.

That he was paid Rsd.249/- per day for doing the work of part time Sweeper from 6-30 a.m. to 2-00 p.m. and for the other works he was paid Rs.80/- per day. That he was discharging perennial nature of job of a sweeper cum messenger. That he rendered his continuous service for more than 240 days in a calendar year for about 13 years. That he was even paid bonus by the bank.

He has alleged that bank absorbed and regularized the services of some casual employees who were junior to him and he was verbally terminated by the Assistant General Manager, UCO Bank from the service of a casual Sweeper in violation of section 2(oo) read with section 25-F of the I.D. Act, 1947.

Therefore, he has prayed that his termination may be declared as illegal and arbitrary. Further prayed the management of the Bank be directed to reinstate him and regularize his service with full back wages.

Such claim of the workmen has been contested by the bank filing written objection where it has alleged that the union which has espoused the dispute has no locustandi to raise the dispute on behalf of the concerned workmen. **(Here I like to mention that order of reference itself proves the present dispute has not been espoused by any union rather by the two concerned workmen challenging their termination and which reflect unmindful of the person who drafted and signed the written statement on behalf of the Bank.**

Further, it is very interesting to note that paragraph 4 of the written statement filed by the bank speaks about plaintiffs and defendants and about an agreement dt.10-12-2007. So, I find that paragraph 4 is the copy/pest of some other pleadings as in this Industrial Tribunal the parties are not referred as Plaintiff and Defendant. More so, in the present dispute subject matter is not an agreement dt.10-12-2007. It very unfortunate that whoever has filed and signed such written statement on behalf of the bank did not bother to check the contents of the written statement containing irrelevant statement. There is not only such irrelevant contents in the written statement, but the evidence of Sri Moloy Kumar Kayal, Sr. Manager contains a paragraph which is being pen-through. It is not known how Ld. Counsel for the bank could file a pen-through evidence in chief of the management witness).

Be that as it may, the case of the bank is that it engaged Sri Tarakeshwar Rewani as a Badli employee and his name does not bear in the master roll of the bank. The workman was never in continuous service even for seven days and question of his putting uninterrupted service to the bank for 13 years and his termination on 31-12-2014 is baseless. That the concerned workman never worked for more than 240 days. Therefore, he is not entitled to any relief. Thus, it has prayed for dismissal of the reference.

The workman in order to substantiate his case and claim has examined himself as W.W.1 and filed following documents in support of his claim:-

1. Particulars of Sweeper working in the Kolkata Zone as on 31-12-2008 and which has been marked as Exb. W-1.
2. Details of Casual Sweepers working in Kolkata Main (Retail) Branch and Mid-Corporate Branch (previously in Kolkata Main Branch) as on 01-08-2008 which has been marked as Exb. W-1/A.
3. Copy of vouchers dt. 26-08-2006, 22-07-2006, 25-01-2007, 31-03-2007, 04-05-2007, 18-08-2007, 18-09-2007, 22-09-2007, 29-12-2007 and 25-07-2009 along with the list of names of casual sweepers to whom payment were made through those vouchers and which have been marked as Exb. W-2 to W-2/Q.
4. Copy of Bank's letter dt. 01-03-2008 to its Chief Security Officer and which has been marked as Exb. W-3.
5. Copy of Banks letter dt. 10-05-2008 addressed to Sr. Manager, Kotak Mahindra Bank Ltd. which has been marked as Exb.W-3/A.
6. Bank's letter dt. 16-06-2008 addressed to the Manager, S.B.I., which has been marked as Exb. W-3/B.
7. Copy of Memorandum dt.29-10-2008 regarding regularisation of Casual Sweepers working on daily wages as Consolidated Wage Sweepers, which has been marked as Exb.W-4.

8. Copy of Govt. of India, Ministry of Finance's letter dt.18-09-2008 addressed to the Chairman & Managing Director, UCO Bank, for regularization of casual sweeper working on daily wages as consolidated wage sweepers and which has been marked as Exb.W-5.

9. Copy of Bank's letter dt. 09-08-2008 addressed to the Jt. Secretary, Govt. of India, Ministry of Finance, regarding regularization of casual sweeper working on daily wages as consolidated wage sweepers and which has been marked as Exb.W-5/A.

10. Copy of AGM's letter dt.26-03-2009 addressed to the Zonal Office, Kolkata and which has been marked as Exb.W-6.

11. Copy of Internal letter of the bank dt.25-03-2009 regarding sweepers posted in the branch and which has been marked as Exb.W-7.

12. Copy of Bank's letter dt.08-01-2014 regarding regularisation of casual sweepers engaged prior to 31-12-2008 as Consolidated Wage Sweeper and which has been marked as Exb.W-8.

13. Copy of representation of the concerned workman dt.10-10-2017 addressed to the Asst. General Manager, UCO Bank and which has been marked as Exb.W-9.

14. Copy of Central Bank of India's circular dt.14-08-2012 regarding Memorandum of Settlement in three pages and which has been marked as Exb.W-10.

15. Copy of letter dt.14-08-2012 of Central Bank of India regarding recruitment of Safai Karmachari cum Sub-staff/or Sub-staff and which has been marked as Exb.W-11.

16. Copy of Union's letter dt.06-11-2017 addressed to the R.L.C. (Central), Kolkata regarding regularisation of the post of Safai Karmachari in UCO Bank and which has been marked as Exb.W-12.

17. Copy of UCO Bank's letter dt.25-09-2018 to the Asst. Labour Commissioner (Central), Kolkata in connection to an industrial dispute raised by the union over unfair labour practice and which has been marked as Exb.W-13.

18. Copy of notice of hearing of A.L.C. (C), Kolkata to the Asst. General Manager, UCO Bank dt.13-12-2017, 05-02-2018, 14-03-2018, 02-05-2018, 21-05-2018 and 26-07-2018, which have been marked as Exb.W- 14 to W-14/E and

19. Copy of conciliation proceeding dt.04-03-2019 before A.L.C. (C), Kolkata, which has been marked as Exb.W-15.

On the other hand the management has examined Sri Moloy Kumar Koyal, Sr. Manager as M.W. 1 and exhibited his letters of authority as Exb.M-1.

Ld. Counsel for the workmen files written notes of argument and cited the following decisions:-

1. Chennai Port Trust –vs- Chennai Port Trust Industrial Employees Canteen Workers Welfare Association &Ors., (2018) 6 SCC 202,

2. Durgapur Casual Workers Union &Ors. –vs- Food Corporation of India &Ors. (2015) 5 SCC 786,

3. Umrala Gram Panchayat –vs- Secretary, Municipal Employees Union &Ors. (2015) 12 SCC 775,

4. Ajaypal Singh –vs- Haryana Warehousing Corpn, (2015) 6 SCC 321,

5. Maharashtra State Road Transport Corpn. & Anrs. –vs- Casteribe Rajya Parivahan Karmachari Sanghatan, (2009) 8 SCC 556,

6. Mintu Kumar –vs- Management of Punjab National Bank Zonal Office, LAWS (SC) 2019 1 429,

7. Gammon India Ltd. –vs- Niranjan Dass (1984) 1 SCC 509,

8. Tapash Kumar Paul –vs- B.S.N.L. & Anr. (2014) 15 SCC 313,

9. Mohan Lal –vs- Management of M/s. Bharat Electronics Ltd. (1981) 3 SCC 225 and

10. Deepali Gundu Surwase –vs- Kranti Junionr Adhyapak Mahavidyalaya (D. ED) &Ors. (2013) 10 SCC 324.

The Bank has also filed written notes of argument and cited only Secretary, State of Karnataka –vs- Umadevi, (2006) 4 SCC 1 in support of its case.

It is admitted fact that Sri Tarakeshwar Rewani was engaged by bank to do the job of Safair Karmachari, but bank has alleged he was engaged as a Badli and not as a casual or part time Sweeper as contended by the workman.

The workman has alleged that he had rendered the job of a part time Safai Karmachari to the bank from 2001 till his illegal retrenchment in the month of December,2014. Further, he has alleged that he has worked for more than 240 days in a calendar year. Therefore, he was retrenched without following the legal procedure as provided in the Industrial Disputes Act, 1947.

In view of above contention of the parties, it becomes necessary to find out whether the concerned workman was engaged by the Bank as a badli or as a casual sweeper on daily wages?

The workman in his cross examination has admitted that he was paid on 'no work no pay' basis. That he was paid Rs.249/- per day on the day he was terminated. That no provident fund was deducted from his wages but he was paid bonus by the bank. That he was not entitled to any kind of leave and he was not required to attend the bank on normal holidays. That he was not paid wages the day he used to remain absent from duty. However, he stated that he had to report for duty before Sri Santanu Roy Chowdhury, Staff Section, Sr. Manager, Sri T. Saha, Staff Mr. Madan Gopal Ram and Sri Prabhat Ghosh, his In-charge. That Sri Prabhat Ghosh used to prepare his wage voucher. That he was engaged by the bank in place of Sri Baijnath who was transferred to the head office. That in the year 2008 casual workmen were made permanent but he was not.

On the other hand, M.W.1 in his cross examination has stated that concerned workman was a Badli worker, he never worked for more than 240 days. The payment was made to the workman through vouchers for the day he was engaged. However, he has admitted that Exb.W-1/A bears seal and signature of the bank and its officials and issued by the bank.

Perused the document Exb. W-1/A, admitted by M.W. 1 being issued by the Bank. Exb. W-1/A appears to be the list and details of Casual Sweepers working in Kolkata Main (Retail) Branch and Mid-Corporate Branch as on 01-08-2008. The name of one Tarak Rewani appears against serial no.4 of such list and he was engaged by the bank as casual sweeper on 14-10-2001 in place of Baij. N. Das, who was transferred to Head Office in September 2001. That Sri Tarakeshwar Rewani was still working in KOl. Main Retail and whose date of birth to be 01-02-1982.

Here, a question may raise whether the said Tarak Rewani and the concerned workman Tarakeswar Rewani is the same person or not?

Ext. W-1 particulars of Sweeper working in the UCO Bank, Kolkata Zone as on 31-12-2008 bears name of one Tarakeswar Rewani as a casual sweeper working in Main(Retail) being engaged on 14-10-2001 and whose date of birth to be 01-02-1982. So, comparing data of casual sweepers of UCO Bank Main (Retail) Branch appearing in both Exb. W-1 and W-1/A, it is seen the date of birth, date of joining as casual sweeper and place of positing of both Tarak Rewani and Tarakeswar Rewani are same. Therefore, it can be safely uphold that Tarak Rewani and Tarakeshwar Rewani is same and one person.

That Exb. W-1 and W-1/A show that Tarakeshwar Rewani had joined UCO Bank Main (Retail) Branch on 14-10-2001 in place of a permanent sweeper named Baijnath Das who was transferred to head office of the bank in the month of September, 2001 and that Tarakeshwar Rewani was still working at Main (Retail) Branch as a casual sweeper on 31-12-2008. Such documents do not disclose that Tarakeshwar Rewani was engaged as a Badli.

Further M.W.no.1 has admitted that Exb.W-3 a letter dt. 01-03-2008 was issued by AGM, UCO Bank Kolkata Main Branch to the Chief Security Officer, Head Office, Security Department.

Exb. W-3 shows that Assistant General Manager, UCO Bank, Kolkata Main Branch had written to the Chief Security Officer, Head Office, Security Department, Kolkata on 01-03-2008 informing that to keep vigilance over the renovation work at Kolkata Main Branch on Saturday night dated 01-03-2008 and on Sunday full day and night to complete the renovation work, he had deputed Sri Tarakeshwar Rewani, Sri Binod Routh and Sri Soumen Mondal. That as per exhibit W-1 and W-1/A, all these three persons were casual sweepers of the UCO Bank, Kolkata Main (Retail) Branch. More so, Exb.W-3 does not describe the designation of those three persons deputed to keep vigil over renovation work of main branch.

M.W.1 has further admitted that Exb.W-3/A and 3/B are two letters issued by the bank in favour of concerned workman Sri Tarakeshwar Rewani. Exb. W-3/A dated 10-05-2008 shows that Sr. Manager of Main (Retail) Branch of the bank had authorised Sri Tarakeshwar Rewani to collect the cheque from Kotak Mahindra Bank Ltd. Exb. W-3/B further shows that Sr. Manager, UCO Bank, Main Branch authorised Sri Tarakeshwar Rewani to collect pay order from SBI, Commercial Branch, Kolkata on 16-06-2008. Thus, Exb.W-3/A and 3/B substantiate the claim of the workman that he was not only made to work as a casual sweeper in the bank but also as a messenger too as per the need of the bank.

M.W.1, Manager of the Bank has also admitted that Exb.W-6, W-7 and W-8 were issued by the bank. Exb.W-6 and Exb.W-7 are copy of AGM's letters dt.26-03-2009 and dt.25-03-2009 addressed to the Zonal Office, Kolkata and which reflect needs of more sweepers to clean the Main Branch which was extended after renovation and detailed particulars of casual sweepers working in the said branch including their date of engagement being forwarded by AGM and which includes name of Tarakeshwar Rewani working at Kolkata Main (Retail) as 1/3rd Casual

Sweeper. Exb.W-8 copy of General Manager (HRM/PHD/OL/Training)'s letter dt.08-01-2014 addressed to Zonal Manager, Suri Zone shows regularisation of two casual sweepers namely Sri Jagananth Das and Sri Rahul Balmiki engaged prior to 31-12-2008 as Consolidated Wage Sweeper. Unfortunately, M.W.1 expressed his ignorance about regularisation of other casual employees by the bank. Further, he has expressed his ignorance about regularisation of all workmen named in Exb.-W-1 except the concerned workman Sri Tarakeshwar Rewani. Therefore, it can be said that M.W.1 has deposed suppressing the actual facts. Therefore, his evidence that Tarakeshwar Rewani was a Badli is unfounded. More so, he has stated that he has not filed any rules and regulation concerning Badli workers. Exb. W-1 and W-1/A show that Sri Tarakeshwar Rewani was engaged on 14-10-2001 in place of Sri Baijnath Das who was transferred to head office on September,2001 in Kolkata Main Branch as a casual sweeper and not as a Badli as alleged by the bank and M.W.1.

Exb. W-6 & W-7 copy of AGM's letters dt.26-03-2009 and dt.25-03-2009 addressed to the Zonal Office, Kolkata reflect need of engagement of casual sweeper to sweep the renovated Kolkata Main (Retail) Branch which involves sweeping of not only two separate basement cells (Locker and Currency Chest), one mezzanine floor, premises at 1st floor, premises at ground floor including the staircase etc. but also the glasses, glass doors and glass counters within the time frame of 7 a.m. to 9.45 a.m. i.e. before business of the bank starts. The entire sweeping cleaning process has to be completed at 9-45 a.m. and there is necessity for engagement of sweepers. Therefore, from such letters of AGM of Kolkata Main (Retail) Branch the job of sweeping and keeping the bank premises clean daily on working days of the bank to impress upon valued customers is a perennial nature of job. So, it appears the bank used to get such perennial nature of job by engaging a casual sweeper or part time sweeper or daily wage sweeper and such very fact suggest indulgence of bank in unfair labour practice by engaging casual sweeper against the permanent post of sweeper.

Exb. W-5/A Bank's letter dt. 09-08-2008 addressed to the Jt. Secretary, Govt. of India, Ministry of Finance, shows the bank had sought clearance for regularization of eligible casual sweeper working on daily wages in the regular employment of the bank as consolidated wage sweepers as approved by the Board of Directors.

Exb.W-5. Govt. of India, Ministry of Finance's letter dt.18-09-2008 addressed to the Chairman & Managing Director, UCO Bank, shows that bank was allowed to regularize of eligible casual sweeper working on daily wages in the regular employment of the bank as consolidated wage sweepers but only after framing H.R. policies and procedure for appointment as indicated in the D.O. letter no.7/48/2004-BOA dt. 22-02-2005 of Ministry of Finance, Govt. of India.

Thus, from Exb. W-5 and W-5/A it is seen that bank was permitted to regularize the service of eligible casual sweeper working on daily wages after framing H.R. policies and procedure for appointment as indicated in the D.O. letter no.7/48/2004-BOA dt. 22-02-2005 of Ministry of Finance, Govt. of India.

Nothing has come on record to show what was the recruitment policy framed by UCO Bank, Kolkata Main (Retail) Branch for regularisation of casual sweeper in bank's regular employment as Consolidated Wage Sweepers in pursuance of Exb.W-4, W-5 and W-5/A.

Nothing has come from the side of the management of the bank the reason behind non-regularisation of the service of the Tarakeshwar Rewani, casual sweeper who was working at UCO Bank, Kolkata Main (Retail) Branch in view of Exb.W-5 and W-5/A dated August and September,2008 or that Tarakeshwar Rewani had no qualification or eligibility for regularization of his service as Consolidated Wage Sweeper.

Exb. W-2 to W-2/Q, copy of vouchers dt. 26-08-2006, 22-07-2006, 25-01-2007, 31-03-2007, 04-05-2007, 18-08-2007, 18-09-2007, 22-09-2007, 29-12-2007 and 25-07-2009 along with the list of names of casual sweepers to whom payment were made through those vouchers prima facie prove that Tarakeshwar Rewani was a casual sweeper at Calcutta Main (Retail) Branch of the bank since 2006 till 2009. Such vouchers corroborate the case of the workman that he was engaged by the bank as a casual sweeper and also the contents of Exb.W-1 and W-1/A.

From the contents of Exb. W-6 and W-7 both dt. March,2009 it is seen due to the extension of Kolkata Main Branch there was necessity to engage or requirement of casual sweeper in addition to three full time sweepers to sweep and clean the branch by 9-45 a.m. and before the start of the banking hours at 10-00 a.m. Such facts leave no room for doubt that bank had indeed engaged Tarakeshwar Rewani beyond 240 days in a year i.e. during the working days of the bank. Exb. W-3 shows the bank used to take service of Tarakeshwar Rewani even during holidays as per their need. So, it is not known how the bank could say that Tarakeshwar Rewani was a Badli and not a casual sweeper and which they have admitted in their own documents Exb.W-1, W-1/A, W-2 series, W-3, W-3/A, W-3/B. More so, the bank has failed to produce attendance register of its permanent sweepers of its Kolkata Main (Retail) Branch to prove during the absence of permanent sweepers it used to engage Sri Tarakeshwar Rewani as Badli.

The above discussed exhibited documents leave no room for doubt that Tarakeshwar Rewani was engaged by bank as a casual sweeper on 14-10-2001 and not as a Badli as alleged.

That a question may arise that Exb.W-2 series show payment being made to the casual sweeper only for few days in a month and if that be so how one can say that Tarakeshwar Rewani was engaged for more than 240 days in a year.

Answer to this question lies in Exb.W- Exb.-W-6 and W-7 and which show there were 13 permanent sweepers and one casual sweeper working in Kolkata Main Branch as on 01-01-2000. Subsequently, the number of sweeper was reduced to 7 as on 01-10-2001 on account of death, retirement, transfer and VRS. That on 4th October, 2001, the then Assistant General Manager decided to engage casual sweeper in place of permanent vacancies for smooth cleaning of the branch to impress upon the valued customers. Thereafter, casual sweepers have been working in the branch in addition to full time sweepers as required by the branch. The number of casual sweepers never exceeded 4 in addition to full time sweepers till 12-05-2007. On 14-05-2007 Kolkata Main Branch was bifurcated to Kolkata Main (Retail) and Mid-Corporate Kolkata and sweepers along with casual sweepers were placed in accordance with office order issued by the then Assistant General Manager. Since then, three casual sweepers have been working in Kolkata Main (Retail) Branch in addition to three full time sweepers but after renovation of Kolkata Main (Retail) Branch sweeping involves not only to separate basement cells (Locker and Currency Chest), one mezzanine floor, premises at 1st floor, premises at ground floor including the staircase etc. but also the glasses, glass doors and glass counters within the time frame of 7 a.m. to 9.45 a.m. i.e. before business of the bank starts. The entire sweeping cleaning process has to be completed at 9-45 a.m. and there is necessity for engagement of casual sweepers.

From such letter of the bank it appears that in view of the decision taken by the then Asst. General Manager to engage casual sweeper in place of permanent vacancy on 04-10-2001, Tarakeshwar Rewani was engaged as a casual on 14-10-2001 in place of permanent vacancy created due to the transfer of permanent sweeper Baijnath Das to head office in the month of September,2001 and which also stands corroborated by Exb.W-1 and W-1/A.

The e-mail of Chief Manager, UCO Bank attached to Exb.W-7 further discloses that Sri Tarakeshwar Rewani was working at Kolkata Main (Retail) Branch as 1/3rd casual sweeper against permanent vacancy and which also proves the job done by Tarakeshwar Rewani was of a perennial nature, normally done by a regular permanent subordinate staff of the bank in the category of sweeper.

Exb. W-5/A dated 09-08-2008 relating to regularization of casual sweeper as Consolidated Wage Sweeper show the Board of Director of the bank decided to regularize casual sweeper who are working on daily wages in different branches in the regular employment of the bank as Consolidated Wage Sweepers and convert the part time sweeper as full time sweeper or sweeper cum Peon in the regular employment of the bank. Formulated the eligibility criteria and decided to regularize only those casual sweepers on daily wages who have put 240 days or more with or without interruption during the period of one year immediately preceding the date of Bank's Circular to be issued in this regard. For the purpose of computing 240 days, holidays and Sundays in a week would be included if such person has been engaged for the rest of the days on the said week. There was a relaxation of age also and fixed the age should be between 18 years to 60 years. Educational qualification above VI standard should not be bar but no benefit will be given for higher qualification and would follow the guidelines regarding reservation of vacancies for SC/ST/OBC candidates.

Exb. W-12 dt.06-11-2017 shows that National Union of Bank Employees had raised an industrial dispute before R.L.C, Kolkata for non-absorption and non-regularization of casual sweeper named Sri Tarakeshwar Rewani and Sri Monoj Kumar, who were engaged in the year 2001 as casual sweeper by the bank and whose service have been discontinued by the bank from December, 2014 without complying the provision of section 25-B and 25-F of I.D. Act and for regularizing junior casual sweeper named Sri Sukanta Ghosh and Sri Prabir Chatterjee who were engaged as casual by the bank in the year 2007 and 2001 and therefore requested to impose penalty against the management of bank for unfair labour practice.

Exb. W-14 series are the notice of the Asst. Labour Commissioner to the bank for its appearance in a conciliation proceeding of industrial dispute raised by National Union of Bank Employees over unfair labour practice in non-regularisation of Sri Tarakeshwar Rewani and Sri Monoj Kumar and for their illegal termination without due compliance of statutory provisions of the Act of 1947.

Since it is the case of the concerned workman that he was retrenched by the bank from the service of casual sweeper in the month of December,2014. Then he was not in service of the bank in any capacity on the date of reference of his dispute to this Tribunal for adjudication on 04-10-2019. Therefore, the workman cannot seek regularization or absorption in permanent post of Sweeper by passing over the recruitment rules, if any, of the bank on the basis of his past service as a casual sweeper.

However, the documentary evidence and oral evidence of the witnesses discussed above it becomes clear that Sri Tarakeshwar Rewani was never appointed as a Badli as alleged by the bank rather he was engaged as a casual sweeper on 14-10-2001 against the permanent vacancy arising out of transfer of permanent sweeper Baijnath Das to head office in the month of September,2001. That due to expansion of Kolkata Main (Retail) Branch the management of the said branch expressed necessity to engage casual sweepers to clean the premises of the branch before the start of banking hours at 10-00 a.m. That exhibited documents further prove that Tarakeshwar Rewani was not only

rendering his service as a casual sweeper but also as a messenger of the bank during banking/ working days and also during the bank holidays to keep vigil over the renovation work of the main branch in the year 2008. Therefore, it can be safely assumed that he had indeed rendered more than 240 days service in a calendar year to the bank.

Thus, in view of provision of section 25-B of the I.D. Act, he having rendered more than 240 days service in a calendar year is/was deemed to be in continuous service of the bank as a casual sweeper. Therefore, in view of provisions of section 25-F of the Act, the bank cannot terminate the service of Sri Tarakeshwar Rewani by discontinuing his service or by preventing him from discharging his duty without giving one month's notice in writing indicating the reason for retrenchment or without making payment of wages for the period of notice. Further, without making payment of retrenchment compensation.

The concerned workman having put more than 240 days in a calendar year as a casual sweeper to do the perennial nature job of the bank and he having engaged in place of permanent sweeper Sri Baijnath Das who was transferred to head office in the month of September, 2001 is deemed to have been rendered continuous service to the bank as a casual sweeper. Therefore, he is entitled to get one month's wage and retrenchment compensation from the bank in view of provision of section 25-F of the I.D. Act, 1947 and which bank has failed to pay.

Therefore, the concerned workman is awarded a lump sum compensation of Rs.6,00,000/- (Rupees Six Lakh) for his illegal retrenchment. The bank is directed to pay the compensation within one month from the date hereof failing which the workman shall be at liberty to get the order executed as per law. Accordingly Reference No.20 of 2019 is disposed of.

Justice K.D. BHUTIA, Presiding Office

नई दिल्ली, 12 अगस्त, 2024

का.आ. 1569.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुंबई पोर्ट ट्रस्ट के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II मुम्बई के पंचाट (19/2012) प्रकाशित करती है।

[सं. एल-31011/1/2011-आई आर (बी-II)]
सलोनी, उप निदेशक

New Delhi, the 12th August, 2024

S.O. 1569.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.19/2012*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. II Mumbai* as shown in the Annexure, in the industrial dispute between the management of Mumbai Port Trust and their workmen.

[No. L-31011/1/2011– IR(B-1I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT

SHRIKANT K. DESHPANDE

Presiding Officer

REFERENCE NO. CGIT-2/19 of 2012

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

MUMBAI PORT TRUST

The Chairman,

Mumbai Port Trust,

Port House, Ballard Estate,

Mumbai- 400038.

AND

THEIR WORKMEN.

The General Secretary,

Mumbai Port Trust Engineers' Guild,

Port Trust Kamgar Sadan,

Nawab Tank Road,

Mazgaon, Mumbai –10.

APPEARANCES:

Party No. 1 : Mr. Umesh Nabar

Advocate

Party No. 2 : Mr. V. Randive

Representative

AWARD

(Delivered on 10-07-2024)

1. This reference has been made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, vide Government of India, Ministry of Labour & Employment, New Delhi, order No. L-31011/1/2011 – IR (B-II) dated 18.04.2012. The terms of reference given in the schedule are as follows :

`Whether the demand of the Mumbai Port Trust Engineers `Guild for the grant of pay scale of Rs. 9100-15100 to the Junior Engineers of Electrical Stream on their financial upgradation as given to the Junior Engineers Gr. III of Mechanical Stream on financial upgradation under ACP Scheme is legal, just and proper? What relief the workmen concerned are entitled to?`

2. Read application Ex-17 filed by the Second Party Union. None present for the Second Party. Mr. Nabar Advocate present for the First Party. It appears that, the dispute involved in the Reference has been already resolved therefore the Second Party Union is not interested to prosecute the Reference further. Second Party Union therefore requested for withdrawal of the Reference. The Counsel for the First Party has given no objection for withdrawal of the Reference. In view of this, the Reference is disposed off as withdrawn. No order as to costs. The proceeding is closed. An award be drawn accordingly.

ORDER

i. The Reference is answered in negative.

ii. The Second Party no. 2 is not entitled for any relief as claimed.

iii. No order as to costs.

iv. The award be sent to the Government.

Date: 10-07-2024

SHRIKANT K. DESHPANDE, Presiding Officer

नई दिल्ली, 12 अगस्त, 2024

का.आ. 1570.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुंबई पोर्ट ट्रस्ट के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. **II** मुम्बई के पंचाट (45/2012) प्रकाशित करती है।

[सं. एल-31011/12/2011-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 12th August, 2024

S.O. 1570.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.45/2012*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. II Mumbai* as shown in the Annexure, in the industrial dispute between the management of Mumbai Port Trust and their workmen.

[No. L-31011/12/2011– IR(B-1I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT

SHRIKANT K. DESHPANDE

Presiding Officer

REFERENCE NO. CGIT-2/45 of 2012

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

MUMBAI PORT TRUST

The Chairman,

Mumbai Port Trust,

Port Bhawan, S.V. Marg,

Mumbai-1.

AND

THEIR WORKMEN.

The Secretary,

Mumbai Port Trust, Dock and General

Employees' Union,

Port Trust Kamgar Sadan,

Nawab Tank Road, Mazgaon,

Mumbai – 400010

APPEARANCES:

Party No. 1	:	Mr. Umesh Nabar Advocate
Party No. 2	:	Mr. V. Randive Representative

AWARD

(Delivered on 10-07-2024)

1. This reference has been made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, vide Government of India, Ministry of Labour & Employment, New Delhi, order No. L-31011/12/2011 – IR (B-II) dated 26.09.2012. The terms of reference given in the schedule are as follows :

> *"Whether the demand of the Mumbai Port Trust, Dock and General Employees `Union, Mumbai for Jr. Engineers Gr. I to be given promotion as Assistant Executive Engineer Class-I, on the basis of experience of 5 years is just and proper? What relief the concerned workmen are entitled to?"*

2. Read application Ex-12 filed by the Secretary of Mumbai Port Trust Dock and General Employees' Union verified Mr. Vijay Randive Secretary in person. Mr. Nabar Advocate present for the First Party. It appears that, the dispute involved in the Reference has been resolved therefore the Second Party Union requested for disposal of Reference as withdrawn. The Counsel for the First Party has given no objection for disposal of the Reference. In view

of this, the Reference is disposed off as withdrawn. No order as to costs. The proceeding is closed. An award be drawn accordingly.

ORDER

i. The Reference is answered in negative.

ii. The Second Party no. 2 is not entitled for any relief as claimed.

iii. No order as to cost.

iv. The award be sent to the Government.

Date: 10-07-2024

SHRIKANT K. DESHPANDE, Presiding Officer

नई दिल्ली, 12 अगस्त, 2024

का.आ. 1571.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एस एंड आईबी सर्विसेज प्राइवेट लिमिटेड, मेसर्स पीवीएस प्राइवेट लिमिटेड, मेसर्स ओरियन सिक्योरिटी सॉल्यूशंस, मेसर्स जी4एस लिमिटेड, ये सभी एक्सिस बैंक लिमिटेड के ठेकेदार हैं। के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **कोलकता** के पंचाट (39/2015) प्रकाशित करती है।

[सं. एल-12011/36/2015- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 12th August, 2024

S.O. 1571.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.39/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of M/s. S & II Service Pvt. Ltd.,M/PVS Pvt. Ltd,M/S Orion Secrurity solutions, M/ S G4S Ltd. All contractors of Axis Bank Ltd. and their workmen.

[No. L-12011/36/2015– IR(B-1I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 39 OF 2015

Parties : Employers in relation to the management of

M/s. S & IB Services Pvt. Ltd.,

M/S PV/S Pvt. Ltd,

M/S Orion Security Solutions,

M/S G4S Ltd. all contractors of Axis Bank Ltd.

AND

Their Union, Bank Employees' Federation, West Bengal

Appearance :

On behalf of M/s. S & IB Services Pvt. Ltd.: Mr. Tapan Kumar Chakraborty, A.R.

On behalf of M/s. PVS Pvt. Ltd.: Mr. Kaustav Sanyal A.R.

On behalf of M/s. Orion Security Solutions: Absent

On behalf of M/s. G4S Ltd.: Absent

On behalf of Axis Bank: Absent

On behalf of the Union : Mr. Sudipta Saha Roy , A.R..

Dated: 6th June, 2024

A W A R D

By order No. L-12011/36/2015 –IR(B-I) dated 03-07-2015, the Central Government, Ministry of Labour in exercise of power conferred u/s 10 (1) (d) and sub-section (2A) of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

"Whether the action of M/s. S & IB Service Pvt. Ltd., M/s. PVS Pvt. Ltd., M/s. Orion Security Solutions and M/s. G4S Ltd., contractors of Axis Bank Ltd. is justified in denying (i) Conveyance Allowance, (ii) Gun Allowance and (iii) Special Allowance to the contractual workmen is legal and/or justified? If not, what relief the workmen are entitled to?"

The facts giving rise to the present reference in brief are that Axis Bank has engaged contractors namely M/s. S & IB Service Pvt. Ltd., M/s. PVS Pvt. Ltd., M/s. Orion Security Solutions and M/s. G4S Ltd. for supply of security guards at its different ATMs and branches. The contractors used to pay allowances namely Conveyance Allowance, Gun Allowance and Special Allowance in addition to their wages from the month of April, 2006. Those allowances were inseparable part of their wages but the contractors without any notice suddenly stopped payment of Conveyance Allowance, Gun Allowance and Special Allowance from the month of October, 2008.

That there was an agreement between the registered trade union i.e. Paschim Banga Security and Co-workmen Trade Union and with one of the contractors M/s. S & IB Services Pvt. Ltd. on 4th November, 2008 in presence of the principal employer Axis Bank, where the contractor agreed to pay Central Minimum Wages to those security personnel instead of State Minimum Wages. That on execution of such agreement the contractor employer stopped payment of Conveyance Allowance, Gun Allowance and Special Allowance on and from October, 2008.

The union approached the contractors and principal employer against the unilateral decision of the employers stopping Conveyance Allowance, Gun Allowance and Special Allowance on several occasions but of no result.

Finding no other alternative they raised an industrial dispute before the Labour Commissioner, but the conciliation proceeding ended in failure due to adamant stand taken by the contractors and principal employer. The union has alleged Conveyance Allowance, Gun Allowance and Special Allowance comes within the parameter of definition of wages as defined under Contactor Labour (Regulation & Abolition) Act, 1970 read with Payment of Wages Act and section 2(rr) of the Industrial Disputes Act, 1947. The denial of legitimate and statutory payment of wages by the contractors is in violation of section 21 of the CLRA, 1970. They have also alleged the principal employer failed to ensure payment of statutory wages along with the allowances by the contractor employers.

Therefore, they have alleged the action of the contractor employers denying the aforementioned allowances to be illegal in violation of section 21 of CLRA 1970 and prayed that the principal employer and contractor employers be directed to pay the statutory dues from the date it has fallen due.

The record shows, notice of the case has been duly served upon all four contractors' employers and the principal employer but the principal employer Axis Bank and the contractors employers namely M/s. Orion Security Solution and M/s. G4S Ltd. have failed to put appearance and pursue with the hearing. Therefore, they have been proceeded exparte.

The present reference has been contested only by the contractor employers namely M/s. S & IB Services Pvt. Ltd. and M/s. Premier Vigilance & Security Pvt. Ltd. by filing two separate written statements/ objection.,

M/s. Premier Vigilance & Security Pvt. Ltd. in its written statement has alleged that this Tribunal has no jurisdiction to entertain the present dispute as the appropriate Government in the present case is the State Government and not Central Government. That the union which has espoused the dispute has no locustandi or representative character to espouse the cause of the concerned personnel. The reference is not maintainable as no proper dispute has been raised by the union against it. That Axis Bank awarded a contract to it for a specific purpose and for a specific period. The contract job which was awarded to this agency is not of a perennial in nature. The contract was given for providing security guards and not for smooth running of commercial activities of the bank. That the Conveyance Allowance, Gun Allowance and Special Allowances claimed by the union is not statutory entitlement. The payment of Central Minimum Wages has no basis as the establishment of the contractor comes within the scope of Govt. of West Bengal. Therefore, the question of application of Central Govt. Minimum Wages does not arise. ALC (C), Kolkata had/has no locustandi to entertain the dispute raised by the union. Therefore, it has prayed for dismissal of the reference.

M/s. S & IB Service Pvt. Ltd. too has alleged the contract which was awarded to it by the Axis Bank contains terms and conditions in relation to the job including monthly rates of payment during the tenure of the contract. The union has no scope to make any demand which have not been sponsored by the Axis Bank. The allowances claimed by the union are not statutory payment. The contractor is bound by the terms and conditions contained in the contract executed between it and the principal employer. That the demand made by the union is not included in the contract or agreement. That there is no violation of provisions of section 21 of CLRA, 1970. That it has no financial capacity to meet the demand as raised by the union. Though the rates of wages is revised from time to time but the demand made by the union is beyond the scope of contract awarded by Axis Bank. Therefore, the reference is not maintainable and prayed for dismissal of the reference.

The Bank Employees Federation, West Bengal to substantiate its claim and claim has examined Sri Kapil Deo Prasad, one of the concerned workmen engaged by contractor M/s. Premier Vigilance Security Pvt. Ltd. as W.W. 1 and Sri Biswajit Ghosh, another workman engaged by contractor M/s. S & IB Services Pvt.Ltd. as W.W. 2.

The union has exhibited following documents :-

1. Photocopy of receipt of security deposit made by W.W. 1 dt.12-08-1999 and which has been marked as Exb. W-1.
2. Copy of ID Card issued to W. W. 1 by M/s. Premier Vigilance & Security Pvt. Ltd. dt.01-06-2010 and which has been marked as Exb. W-2.
3. Another ID Card of W.W. No. dt.31-12-2015 issued by M/s. Orion Security Solution Pvt. Ltd. and which has been marked as Exb. W-3.
4. Copy of wage slip of W.W. 1 issued by M/s. Premier Vigilance & Security Pvt. Ltd. for the months of November, 2008, December, 2008, December, 2009, January,2009, February, 2009, March, 2009 and April,2009 and which have been marked as Exb. W-4 to W-4/6.
5. Copy of conciliation failure report dt.12-05-2015 of ALC (C) , Kolkata to the Ministry of Labour and which has been marked as Exb.W-5.
6. Copy of ID Card of Sri Biswajit Ghosh, W.W.2 issued by M/s. Premier Vigilance & Security Pvt. Ltd. and M/s. Security and Intelligence Services (India) Ltd. and which have been marked as Exb.W-6 and W-7.
7. Copy of Posting Order of Sri Biswajit Ghosh dt.27-12-1999 issued by M/s. Premier Vigilance & Security Pvt. Ltd. and which has been marked as Exb.W-8.
8. Copy of Posting Order of Sri Biswajit Ghosh dt.08-08-2005 issued by M/s. Security and Investigation Bureau and which has been marked as Exb.W-9.
9. Copy of record of conciliation proceeding dt.08-04-2014 and 08-09-2014 and which have been marked as Exb.W-10 and W-10/A.
10. Memo of Settlement between the management of M/s. Security and Investigation Bureau and its workmen represented by Paschim Banga Security & Co-Workmen's Union dt.04-12-2008 and which has been marked as Exb.W-11.

On the other hand the management of M/s. S & IB Services Pvt. Ltd. has examined Sri Ajay Mukherjee, Sr. Manager- Billing & ERP Package as M. W.1. and contesting contractor employer M/s. Premier Vigilance Security Pvt. Ltd. failed to adduce oral and documentary evidence.

The management of M/s. S & IB Services Pvt. Ltd. has produced the following documents:-

1. Copy of Register of Wages in 16 pages and which have been marked as Exb. M-1 to M-1/10.
2. Copy of circular dt.28-07-2023 issued by Office of the Labour Commissioner, Govt. of West Bengal regarding Minimum Rate of Wages and which has been marked as Exb.M-2.
3. Photocopy of e-mail dt.04-06-2013 and 28-11-2013 relating to billing calculation sheet of wages payable to the security agencies w.e.f. 01-04-2013 to 30-09-2013 with rate break up in nine pages and which have been marked as Exb. M-3 collectively.

That M/s. S & IB Security Pvt. Ltd. has filed written notes of argument.

Having regards to the argument advanced by both sides and the evidence both oral and documentary which have come on record the issue which needs determination in the present case is legality regarding unilateral decision of the employers to stop the payment of Conveyance Allowance, Gun Allowance and Special Allowance to the security guards from the month of October, 2008.

It is the case of the union that the contractors and the principal employer suddenly and unilaterally stopped payment of Conveyance Allowance, Gun Allowance and Special Allowance which the security guards supplied by the contactors to guard the ATMs and branches of Axis Bank were paid till September, 2008. They have also alleged those allowances are statutory allowances which do form the integral part of their wages. Such statutory entitlement cannot be denied by the employers.

Further, the contesting contractor employers have alleged that this Tribunal has no jurisdiction to entertain the present reference as the appropriate Government who can refer the dispute involved is the State Govt. and not Central Government. Further, it has alleged that the contractors are bound to follow Minimum Rate of Wages fixed by the State Govt. and not Minimum Rate of Wages fixed by the Central Govt.

First, let me find out whether this Tribunal has jurisdiction to entertain the present reference or not?

In the present case the dispute is between the employees of the contractors with the contractor employers engaged by the Axis Bank Ltd. for supply of man power. The establishment involved in the present case is the Axis Bank Ltd. and principal employer is also the Axis Bank Ltd. That in view of the section 2(a) (i) of the I.D. Act, 1947 the appropriate Government in relation to any dispute concerning bank is the Central Govt. and not the State Govt. Further, in view of proviso of section 2 (a) (ii) of the Act of 1947, in case of a dispute between a contractor and the contract labour employed through the contactor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government which has control over such industrial establishment. Therefore, in view of section 2 (a) (i) and (ii) the appropriate Government who can make reference of an industrial dispute concerning a bank to a Tribunal or Labour Court is the Central Government and not State Government as alleged by both the contesting contractor employers. Therefore, this Tribunal holds that it has ample jurisdiction to entertain the present reference.

Now, let see whether the contractor employers are justified in denying conveyance allowance, gun allowance and special allowance to the security personnel deployed by them in the establishment of Axis Bank Ltd. and whether the employer unilaterally stopped payment of those allowances mentioned above?

Exhibit-W-2, W-3 and W-6 prima facie prove W.W.1 and W.W.2 security guards were engaged by contractors by M/s. Premier Vigilance and Security Ltd. and M/s. Orion Security Solution Pvt. Ltd. of Axis Bank.

Exhibit-W-4 series wage slips of W.W. 1of different months i.e. from the month of November, 2008 to April, 2019 show that he was paid wages for 26 days in a month along with overtime wage, HRA and Washing Allowance. That deduction was made towards EPF, ESI and Professional Tax. That he was paid travelling allowance in the month of November, 2008 and December, 2008.

Exhibit-W-8 and W-9, the transfer order of W.W.2 Sri Biswajit Ghosh shows that contractor employers namely M/s. Premier Vigilance Security Pvt. Ltd. and M/s. Security and Investigation Bureau had right to transfer their security guards from one branch to another branch of Axis Bank which was earlier known as UTI Bank.

It is very unfortunate to note that union which has espoused the dispute and those two concerned workmen who have examined themselves as W.W.1 and W.W.2 for reasons best known to them have failed to produce their wage slips issued by their contractor employers to show that they were paid conveyance allowance, special allowance and gun allowance till September, 2008 and from October, 2008 payment of such allowances were suddenly stopped without any notice to them by the contractor employers to substantiate their claim and case.

However, M.W.1 in his cross examination has admitted that all the workmen of M/s. S & IB Security Pvt. Ltd. used to draw conveyance allowance irrespective of their posts in the year 2008. That peon and housekeeping staff used to draw special allowance along with conveyance allowance and Gunmen used to draw gun allowance along with other allowances. That payment of those allowances were stopped from the month of October, 2008 without serving any prior notice to the workmen or to the concerned union. He at the same time stated all the allowances payable to the workmen depends upon the payment pattern fixed and determined by Axis Bank and it merely complies the direction of Axis Bank. That workmen were paid minimum wages as fixed by the State Government.

Further, he has stated that by virtue of such settlement it started making payment of minimum rate of wages as guided by the principal employer Axis Bank Ltd. Therefore, even after the withdrawal of gun allowance, special allowance and conveyance allowance there was no reduction in the gross wages of the employees. The principal employer reimbursed the salary paid to its employees and question of less payment does not arise. That Wage Register from the month of June and December, 2012, 2013 and 2014 prove payment of minimum wages to the employees. Gun allowance, conveyance allowance and special allowance are not components of basic wages of the employees concerned and cannot claim as a matter of right.

Thus, from such admission made by M.W.1 it proves the employees of contractor M/s. S & IB Services Pvt. Ltd. deployed in the establishment of Axis Bank Ltd. were paid conveyance allowance, gun allowance and special allowance till September,2008 and thereafter it has stopped payment of such allowances.

Nothing has come on record to show that payment of such allowances was stopped by M/s. S & IB Services Pvt. Ltd. on the basis of settlement it had with the workmen concerned or the union of its workmen or after serving 21 days' notice to the concerned workmen or to the concerned union as required u/s 9-A of the I.D. Act as stoppage of allowances also amounts to change in condition of service or at the direction of the Principal Employer.

Exhibit-W-5 a failure report dt. 12-05-2015 submitted by ALC (C), Kolkata to the Ministry of Labour for making reference u/s 10 (A) of the I.D. Act, 1947 discloses that during the conciliation proceeding or in the course of discussion union has demanded enhancement of minimum wages for the period from October 2009 to December 2009, National Holidays payment, payment of conveyance allowance and special allowance at the rate of Rs.175/- per month which was stopped from October,2006. The union further demanded that contractual workmen should be provided conveyance allowance, special allowance and gun allowance.

Thus, from such report of ALC (C), Kolkata it appears the conveyance allowance and special allowance were paid earlier at the rate of Rs.175/- was stopped from the month of October, 2006 and not from October,2008 as contended by the union in its claim statement. It further shows that union has demanded payment of conveyance allowance, special allowance and gun allowance to the contractual workmen.

Further, it discloses the contractor employers namely M/s. S & IB Services Pvt. Ltd., M/s. PVS Ltd. and M/s. G4S Ltd. all contractors of Axis Bank Ltd. have agreed to make difference payment, if there is any, for the period from October, 2009 to December, 2009 and agreed to pay special allowance and gun allowance provided principal employer reimburse the same.

Exhibit-W-11 memorandum of settlement between the management of M/s. S & IB Security Pvt. Ltd. in relation to its contract agreement with Axis Bank, Kolkata for deployment of man power in the branches/ATMs of the Bank and its workmen represented by Paschim Banga Security and Co-workmen Union arrived in terms of section 12 (3) of the I.D. Act, 1947 on 04-12-2008, shows that there was a dispute regarding non-payment of minimum wages to the security personnel at the rates notified by appropriate Government and agency's practice to bifurcate the minimum wages into basic wage, HRA and other allowances in order to keep low basic wage for the purpose of computation of contribution towards EPF, bonus and gratuity. That there is no mention about sudden stoppage of payment of conveyance allowance, gun allowance and special allowance by the agency. However, it was settled between the contractor M/s. S & IB Services Pvt. Ltd. and the union concerned that minimum wages payable to the personnel employed by M/s. S & IB Security Pvt. Ltd. at various branches and ATMs of Axis Bank in West Bengal (excluding Bardhaman, Bankura, Birbhum and Asansol districts) shall be paid as basic wage only and no bifurcation of such minimum wage as notified by the appropriate Government from time to time shall be done by the employer.

That no copy of agreement or copy of contract executed between the contractors and the principal employer have come on record to show the terms and conditions of the contract and regarding payment pattern of wages by the contractors to their employees. But, from the admission made by the M.W.1 in his cross examination, it is seen that indeed the security guards engaged by them were paid gun allowance and other allowances prior to October, 2008 and they were paid minimum wages at the rate fixed by State Government.

Exhibit-W-11 discloses that contractor employer had agreed to pay minimum wages as notified by the appropriate Government from time to time but it does not specifically mention whether notified by the Central Government or by the State Government. Consequently, it becomes necessary to decide whether the contractor employer is bound to fix the minimum wages at the rate fixed by the Central Government or State Government as in the present case the appropriate Government to make reference of an industrial dispute concerning the establishment of the principal employer/Axis Bank Ltd. happens to be the Central Government. But, matters concerning labours and its welfare come under the purview of both State and Central Govt. as per constitutional law, thereby resulting in multi-jurisdictional regulation. India has no National Minimum Wage. Therefore, workers from all industries are entitled to receive minimum wages fixed by their respective State Govt.

In the present case the dispute is in between the security guards and their employers who have deployed them to work at different branches and ATMs of Axis Bank situated in West Bengal and as such they are entitled to get minimum rate of wages as fixed by the State Government. Moreover, section 2 (i) of Payment of Wages Act, 1936

provides that appropriate Government in relation to Railway, Air Transport Services, Mines and Oil Fields is the Central Government and in relation to all other cases the State Government. Therefore, the contractors' employees of Axis Bank are entitled to Minimum Rate of Wages fixed by the State Government of West Bengal from time to time

It is the case of the union that conveyance allowance, gun allowance and special allowance were integral part of their wages under Payment of Wages Act and which cannot be withdrawn by the employer unilaterally.

The term 'wages' has been defined in section 2 (vi) of the Payment of Wages Act, 1936 as follows:-

"wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include—

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of [the appropriate Government];

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)]

Therefore, on plain reading of the definition of wages as provided in the Act of 1936, it appears the wages does not include travelling allowances or the value of any travelling concession. Therefore, this Tribunal is of view that conveyance allowance does not form an integral part of wages. That apart nothing has come to prove that gun allowance and special allowance too form part of basic wages.

W.W.2 in his cross examination has stated that he worked for S & IB from 8th August, 2005 till 2014 and lastly he worked for SIS and who terminated him. He has also stated that they have raised an industrial dispute for non-payment of allowances and not for his termination.

W.W.1 too in his cross examination has admitted that he never worked for S & IB. That he used to work for Premier Vigilance & Security Pvt. Ltd. as a guard since 1999 till 14-07-2014. That he was not retrenched from the service by Premier Vigilance. That he was paid conveyance allowance by Premier Vigilance and suddenly payment

was stopped from January,2009. That he and other made several representations before the authorities of Premier Vigilance and who informed that due to non-payment of conveyance allowance by the Axis Bank it had to stop the payment.

So, it is seen that different contractors of Axis Bank had stopped payment of conveyance allowance to their security guards after October,2008. Exhibit-W-11 dt. 04-12-2008 also does not disclose settlement being entered in respect of conveyance allowance, gun allowance and special allowance. It shows the settlement was entered between S & IB and the concerned union with regard to payment of wages at minimum rate of wages fixed by appropriate Government and for non-bifurcation of such minimum wages.

Be that as it may, it is admitted fact that contractor employer S & IB had withdrawn conveyance allowance, gun allowance and special allowance from the month of October,2008 onwards without prior notice to the workmen concerned or to their union. That in view of provisions of section 9-A of the Industrial Disputes Act, no employer who proposed to effect any change in the condition of service applicable to any workman in respect of any matter specified in fourth schedule has to give 21 days' notice to the workmen or to the union. In the present case it is seen all the contactor employers of Axis Bank including M/s. S & IB Security Pvt. Ltd. has failed to give notice u/s 9-A to the concerned employees or to their union. Therefore, unilateral decision to stop payment of conveyance allowance, gun allowance and special allowance from the month of October, 2008 onwards, otherwise paid to the security guards till the month of September,2008 or till December,2008 by M/s. Premier Vigilance without prior notice is held to be illegal. Moreover, the contractor employers have failed to produce the copy of agreements or contract it had with Axis Bank Ltd. regarding supply of security guards to show that due to sudden withdrawal of payment by the principal employer they were unable to make payment of those allowances to their employees who were security guards.

However, in view of the provision of section 9-A of the I.D. Act both the employers are bound to give prior notice in respect of any change in condition of service which includes allowances also, when the contractor employer has failed to produce any settlement it had with the workmen or their union for withdrawal of such allowances. The employers cannot wriggle out of the provisions of section 9-A of the I.D. Act, 1947.

Therefore, the contractor employers are bound to pay conveyance allowance, gun allowance and special allowance which were earlier paid to those security personnel deployed by them in the establishment of principal employer Axis Bank Ltd. from the date they have stopped payment unilaterally or at the direction of the principal employer till those security personnel worked for them in the establishment of the Principal Employer and can claim reimbursement of the same from the Principal employer.

In case those contractors fail to pay such due to those security guards deployed by them in the establishment of Axis Bank Ltd., then in view of provisions of section 21 (4) of Contract Labour (Regulation & Abolition) Act, 1970 the principal employer who is the ultimate user of the service of those security guards are bound to pay the arrears due to those security guards employed by it through different contractors after verification of their service in its establishment and also after verifying their wage slips of September,2008 onwards till it took their services and recover the same from its contractors from the pending bills, if any, provided it had already paid those allowances to the contractors. In case if it had not paid toward such allowances to its contractors then it is bound to make payment of arrear of conveyance allowance, gun allowance and special allowance to all the security personnel engaged by it through the above mentioned contractors for the period of contract it had with them or till the period those security personnel rendered service to its establishment.

Accordingly, Reference no.39 of 2015 is allowed with the finding that unilateral decision of the contractor employers as well as principal employer Axis Bank Ltd. without complying with the mandatory provisions of section 9-A of I.D. Act, in effecting changes in the service conditions of contractor employees by stopping payment of conveyance allowance, gun allowance and special allowance is held to be illegal and they are bound to pay the dues of those workmen from the date, the payment was stopped till their service in the establishment of the Axis Bank Ltd.

Both the principal employer and contractor employers are directed to make payment of the above due within three months from the date hereof failing which the union shall be at liberty to recover the same according to law.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 12 अगस्त, 2024

का.आ. 1572.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय**,आसनसोल के पंचाट (सन्दर्भ संख्या **17/2021**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **07/08/2024** को प्राप्त हुआ था।

[सं. एल.-22012/35/2021-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 12th August, 2024

S.O. 1572.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No.17/2021** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on 0***7/08/2024.***

[No. L-22012/35/2021 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 17 OF 2021

PARTIES: Prabir Bouri

Vs.

Management of 1 and 2 Incline, Jhanjra Area of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Basudev Choudhury, Advocate.

For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 18.07.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India through the Ministry of Labour, vide its Order **No. L-22012/35/2021-IR(CM-II)** dated 08.09.2021 has been pleased to refer the following dispute between the employer, that is the Management of 1 and 2 Incline Under Jhanjra Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" *Whether the action of the Management of M/s. Eastern Coalfields Ltd. in relation to its 1 & 2 Incline under Jhanjra Area in imposing a punishment of dismissal on Shri Prabir Bouri, Cat-I Mazdoor (Man No. 74801), vide ref. No. GM/JNR/PERS/2013/1648 dated 19-03-2013 is just and legal? if not, to what relief the workman is entitled to?* **"**

1. On receiving Order **No. L-22012/35/2021-IR(CM-II)** dated 08.09.2021 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 17 of 2021** was registered on 20.09.2021 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of their witnesses.

2. The workman filed his written statement on 24.07.2023. The fact of the case as disclosed in his written statement is that Prabir Bouri, the workman was a permanent employee at Jhanjra Project Colliery under Jhanjra Area of Eastern Coalfields Limited (hereinafter referred to as ECL) bearing U.M. No. 747801. He was appointed on 19.09.1985 and had remained absent from duty from 18.04.2012 due to his illness. He informed the management about the reason of his absence. Despite such information management illegally issued a Charge Sheet to him bearing No. AGT/JNR/1&2/P/CS/12/789 dated 30.04.2012. A Domestic Enquiry was held against him on 24.07.2012. The workman participated in the Enquiry Proceeding and disclosed the reason of his absence and also submitted Medical Certificate in support of his illness. No 2nd Show Cause Notice was issued by the management nor any copy of Enquiry Proceeding was supplied to him before dismissing him from service, violating the principles of natural justice. It is contended that a major punishment has been imposed against the workman, disproportionate to the alleged charge. He has been made jobless and forced to a starving condition. The dismissed workman prayed for setting aside the order of dismissal, seeking reinstatement in service and payment of back wages.

3. The management of ECL contested the case by filing their written statement on 23.01.2023. It is stated that Prabir Bouri, General Mazdoor, Category – I, was absenting from his duty at Jhanjra Project Colliery since 18.04.2012 without any information. A Charge Sheet was issued to Prabir Bouri for misconduct vide Charge Sheet No. AGT/JNR/1&2/P/CS/12/789 dated 30.04.2012 under Clause 26.23 of Certified Standing Order for his habitual absence from duty without cause and under Clause 26.29 of Certified Standing Order for unauthorized absence for more than ten days. The Charge Sheet was received by the delinquent by putting his signature. The reply submitted against the Charge Sheet was not satisfactory and a Domestic Enquiry was initiated. Enquiry was held against Prabir Bouri on 24.07.2012, following the principle of principles of natural justice and the charges were well established against him. Management issued a 2nd Show Cause Notice to the charged employee bearing Ref. No. GM/JNR/PERS/2013/1355 dated 16/19.01.2013. Copy of Enquiry Proceeding and Enquiry Report were supplied to him with the 2nd Show Cause Notice and the workman submitted his written reply. The reply of the workman was not found satisfactory by the Disciplinary Authority as his past record in service was poor. The management having no other alternative, dismissed the workman from service of the company vide Office Order bearing Ref. No. GM/JNR/PERS/2013/1648 dated 19.03.2013. It is claimed that the Industrial Dispute is liable to be dismissed.

4. The dismissed workman has examined himself as Workman Witness – 1 and filed his affidavit-in-chief, wherein he has averred that he informed the management the reason of his absence but the management illegally and arbitrarily issued Charge Sheet against him. A Domestic Enquiry was held in respect of the charge and he participated in the enquiry. In the Enquiry Proceeding the workman disclosed that he was suffering from illness but management did not consider the document. No 2nd Show Cause Notice was served upon him and the management illegally terminated him from service violating the principles of natural justice. During the evidence the workman witness produced a copy of his order of dismissal dated 19.03.2013 as Exhibit W-1.

5. During cross-examination workman witness denied the suggestion that he worked for thirty-two days in the year 2009, sixteen days in the year 2010 and forty-one days in the year 2011. He further denied that due to his unauthorized absence his annual increments were stopped or that he did not remain absent for his illness. The witness also disowned the signature appearing on the reply to the 2nd Show Cause Notice and on the copy of the Charge Sheet. The witness however admitted the signature appearing in the Enquiry Report, and the same has been marked as Exhibit M-1.

6. Mr. Alaric Oneal Lyndem, Manager (Personnel), Jhanjra Project Colliery has been examined as Management Witness – 1. In the affidavit-in-chief the witness stated that Prabir Bouri was chargesheeted on 30.04.2012 under Clause 26.29 of Certified Standing Order for being absent from duty beyond ten days without sanctioned leave or sufficient cause and under Clause 26.23 for habitual low attendance or absence from duty without sufficient cause. It is stated that the Charge Sheet was received by the workman by putting his signature on the office copy of the same. As his reply was not found satisfactory and for his antecedents of habitual absence a Domestic Enquiry was held. It is also stated that the charge against Prabir Bouri was proved and on the basis of the findings of the Enquiry Officer management issued 2nd Show Cause Notice to the workman along with his Enquiry Proceeding. The delinquent employee submitted reply to the 2nd Show Cause Notice but it was not found satisfactory and he was dismissed from service by order dated 19.03.2013. In course of his evidence the management witness produced the following documents:

(i) Signature of Prabir Bouri on the Enquiry Proceeding is marked as Exhibit M-1.

(ii) Copy of the Charge Sheet dated 30.04.2012 has been produced as Exhibit M-2.

(iii) Copy of the reply to the Charge Sheet, as Exhibit M-3.

(iv) Copy of the Notice of enquiry dated 21.07.2012, as Exhibit M-4.

(v) Copy of the Enquiry Proceeding dated 24.07.2012 in three pages has been collectively marked as Exhibit-5.

(vi) Prabir Bouri has put his signature on all the pages of Enquiry Proceeding. The signature on page no. 1 and 2 of the Enquiry Proceeding has been marked as Exhibit M-5/1 and M-5/2 and signature on page no. 3 has already been marked as Exhibit M-1.

(vii) Copy of the Enquiry Report dated 24.07.2012, as Exhibit M-6.

(viii) Copy of the 2nd Show Cause Notice dated 16/19.01.2013 has been produced as Exhibit M-7.

(ix) Copy of the reply to the 2nd Show Cause Notice, as Exhibit M-8.

(x) Copy of the order of dismissal dated 19.03.2013, as Exhibit M-9.

7. In cross-examination the witness denied that the punishment of dismissal of Prabir Bouri from service was improper or it was illegal.

8. The point for consideration before this Tribunal is whether the punishment of dismissal imposed against Prabir Bouri is just and legal. If not, whether he is entitled to any relief?

9. Mr. Basudev Choudhury, learned advocate for the workman argued that Prabir Bouri was serving the company as a permanent employee since 1985. He has rendered satisfactory service all through, but the management of ECL in an arbitrary manner issued a Charge Sheet against the workman for his absence from duty for a period of only twelve days and imposed a disproportionate punishment without service of Charge Sheet, 2nd Show Cause Notice and Enquiry Report. It is further argued that the workman participated in the Enquiry Proceeding and produced his medical certificate in support of his absence from 18.04.2012 to 18.07.2012 but the Enquiry Officer did not consider the Certificate, covering the period of his absence on the ground that he did not receive medical treatment from colliery Hospital. Learned advocate argued that the Enquiry Proceeding was held in violation of principles of natural justice without providing any opportunity to the workman and by way of rejecting his defence without any plausible cause. Learned advocate asserted that the order of dismissal passed against the workman is illegal, improper, arbitrary and is liable to be set aside. It is urged that the workman merits reinstatement in service and payment of back wages till his reinstatement.

10. Mr. P. K. Das, learned advocate for the management argued that copy of Charge Sheet, Enquiry Report and 2nd Show Cause Notice were served upon the charged workman who received the same by putting his signatures. In his cross-examination the workman witness admitted his signatures appearing in the Enquiry Proceeding, which goes to establish that he was well informed about the Charge Sheet against him as well as the Enquiry Proceeding conducted by the Enquiry Officer. It is argued that the workman is a habitual absentee and attended his duty for thirty-two days the year 2009, sixteen days in the year 2010 and forty-one days in the year 2011. Due to his previous absence the workman was earlier punished by stoppage of one increment in the year 1996, stoppage of two increments in the year 1997 and final warning in the year 1999. Once again, he was punished by stoppage of three increments in the year 2000 and stoppage of one increment in the year 2001. He was demoted to the post of Cleaning Mazdoor, Category – I in the year 2005. Again, he was demoted to the initial Basic of Category – I as a last chance in the year 2006. Stoppage of one increment in the year 2010 and thereafter stoppage of three increments in the year 2011. It is submitted by the learned advocate that the workman did not rectify his conduct and continued to remain absent without informing the management of the company and thereby caused disruption in service, being absolutely unpredictable in his attendance. Learned advocate took me through the Charge Sheet dated 30.04.2012 (Exhibit M-2) which bears the signature of the workman. The workman submitted a reply to the Charge Sheet on 20.07.2012 i.e. after two months and twenty days after the issuance of Charge Sheet, wherein he prayed for allowing him to join duty on the ground that he was under medical treatment and was then found fit to join his duty. Learned advocate drew my attention to the Notice of enquiry, a copy of which was also served upon the workman. Copy of the Enquiry Proceeding and Enquiry Report have been produced as Exhibit M-5 and Exhibit M-6. Regarding issuance of 2nd Show Cause Notice, the learned advocate pointed out that a 2nd Show Cause Notice dated 16/19.01.2013 was issued to Prabir Bouri, which has been produced as Exhibit M-7. Though the workman has denied having received the 2nd Show Cause Notice, the learned advocate for management referred to the reply submitted by Prabir Bouri dated 31.01.2013 against 2nd Show Cause Notice, where he has reiterated his earlier statement that he was under medical treatment at Khandra BPHC from 18.04.2012 to 18.07.2012. It is argued that the reply to the 2nd Show Cause Notice goes to prove that the 2nd Show Cause Notice was served upon the workman and he had been provided with reasonable opportunity to meet the charge levelled against him under Clause 26.23 and 26.29 of the Certified Standing Order. It is vehemently argued that there is no illegality on the part of the management in issuing the Charge Sheet against a habitual absentee who had no responsibility towards his work. It is urged that the Industrial Dispute raised by the workman eight years after his dismissal has no merit and is liable to be dismissed.

11. I have considered the rival contentions of the parties in the backdrop of facts and circumstances of the case. The evidence on record is rife to establish that the workman had actually remained absent from duty for more than three months from 18.04.2012 to 18.07.2012 and he submitted his application, seeking permission to join his duty only from 20.07.2012 (Exhibit M-3). Nowhere in the application he disclosed the nature of the ailment or the place where he received the medical treatment. Only after the Enquiry Proceeding was started, he made an endeavour to

defend the case raising a plea that he was absent from duty due to illness. The Enquiry Officer in his Report (Exhibit M-6) has stated that the workman did not report to the company's dispensary and also failed to produce the papers related to his medical treatment. Besides, the charge of unauthorized absence for more than ten days under Clause 26.29 of the Certified Standing Order, the Enquiry Officer has found the workman a habitual absentee who performed work for thirty-two days in the year 2009, sixteen days in the year 2010 and forty-one days in the year 2011 and till 18.04.2012 he performed work for only fourteen days. These facts have not been controverted by the workman. Simple denial of such facts in course of cross-examination does not disprove the charge of misconduct under Clause 26.23 of the Certified Standing Order. It is evident the that previously the workman had been subjected to minor punishment on nine occasions from December 1996 to August 2011. The workman did not mend his conduct nor did he care to attend his work after so many occasions of warning and punishments meted out to him. The workman submitted his reply to the 2nd Show Cause Notice which has been produced as Exhibit M-8. The controlling authority finally issued the Office Order dated 19.03.12013, dismissing him from his service in exercise of power conferred to him under Clause 27 of the Certified Standing Order applicable to the workman and the establishment.

12. In my considered view the management having provided reasonable opportunity to the workman has initiated a Departmental Proceeding against him for his misconduct and after following the principles of natural justice the Enquiry Officer found the workman guilty of the charge. The workman failed to satisfy the Disciplinary Authority by submitting his explanation to the 2nd Show Cause Notice and the General Manager of Jhanjra Area, ECL, being the competent authority dismissed him from service. I find no illegality, impropriety or irregularity in the proceeding and the final outcome. The workman having faced nine minor punishments in earlier occasions, failed to rectify his conduct. Therefore, there is no extenuating circumstance for him to avoid the punishment of dismissal from service. I do not find any illegality in the Enquiry Proceeding nor the order of dismissal passed against Prabir Bouri. Therefore, the Industrial Dispute is dismissed on contest.

Hence,

O R D E R E D

that the Industrial Dispute is dismissed on contest against the workman. I find no reason to interfere with the order of dismissal passed against Prabir Bouri. An award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 12 अगस्त, 2024

का.आ. 1573.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय**,आसनसोल के पंचाट (सन्दर्भ संख्या **04/2023**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **07/08/2024** को प्राप्त हुआ था।

[सं. एल.-22012/116/2022-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 12th August, 2024

S.O. 1573.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No.04/2023** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on 0***7/08/2024.***

[No. L-22012/116/2022 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,

Presiding Officer,

C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 04 OF 2023

PARTIES: Rajdeep Mukherjee

Vs.

Management of Satgram Incline of ECL and Another

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 03.07.2024

A W A R D

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/116/2022-IR(CM-II)** dated 04.01.2023 has been pleased to refer the following dispute between the employer, that is the Management of Satgram Incline under Satgram Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" Whether the demand raised by Union i.e. Koyala Mazdoor Congress, Asansol to the management of Eastern Coalfields Ltd. to regularize as Survey Mazdoor to Shri Rajdeep Mukherjee, General Mazdoor, UM No. 193321, of Satgram Incline under Satgram Area of M/s. Eastern Coalfields Ltd. is proper, legal and justified? If yes, what relief the concerned workman is entitled to? "

1. On receiving Order **No. L-22012/116/2022-IR(CM-II)** dated 04.01.2023 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 04 of 2023** was registered on 05.01.2023 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. Rakesh Kumar, union representative appeared for Rajdeep Mukherjee, the aggrieved workman. Case is fixed up today for the third time for evidence of workman witness. On repeated calls at 01.30 p.m., the workman is not found available. Mr. P. K. Das, learned advocate for the management of Eastern Coalfields Limited is present.

3. After registration of the case, Notice under registered post was issued to the parties. Koyala Mazdoor Congress filed a written statement on 22.03.2023 on behalf of the workman through Mr. H. L. Soni, Assistant General Secretary, Koyala Mazdoor Congress, Asansol. The Agent, Satgram (R) Colliery filed written statement on 28.4.2023. Case was thereafter fixed for evidence of workman witness on 30.08.2023, 13.02.2024 and for ends of justice case is fixed up today for appearance and evidence of workman witness, in default the case is to be disposed of.

4. The aggrieved workman has remained absent on three consecutive dates fixed for evidence. The conduct of the workman indicates that he is not inclined to proceed with this case. Accordingly, the matter cannot be kept pending without any reasonable cause. The Industrial Dispute is therefore dismissed for default. Let a No Dispute Award be drawn up. Let the matter be communicated to Ministry for notification.

Hence,

O R D E R E D

that a No Dispute Award be drawn up in the above Reference case. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 12 अगस्त, 2024

का.आ. 1574.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्यागिक अधिकरण–सह–श्रम न्यायालय**,आसनसोल के पंचाट (सन्दर्भ संख्या **28/2022**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **07/08/2024** को प्राप्त हुआ था।

[सं. एल.-22012/59/2022-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 12th August, 2024

S.O. 1574.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No.28/2022** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on 01***/08/2024.***

[No. L-22012/59/2022 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 28 OF 2022

PARTIES: S. Mahesh Sekhar

Vs.

Management of Satgram Incline of ECL and Another.

REPRESENTATIVES:

For the Union/Workman: Mr. Bipul Banerjee, Advocate.

For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal

STATE: West Bengal.

Dated: 28.06.2024

A W A R D

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/59/2022-IR(CM-II)** dated 14.06.2022 has been pleased to refer the following dispute between the employer, that is the Management of Satgram Incline under Satgram Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" *Whether the action of the Management of M/s. Eastern Coalfields Ltd. in relation to its Satgram Incline under Satgram Area in non-payment of House Rent Allowance from January, 2021 in respect of Shri S. Mahesh Sekhar, Electric Helper, Man No. 188562 of Satgram Area is proper, legal and justified? If not, what relief the workman concerned is entitled to?* ***"***

1. On receiving Order **No. L-22012/59/2022-IR(CM-II)** dated 14.06.2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 28 of 2022** was registered on 14.06.2022 / 01.07.2022 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. P.K. Das, learned advocate for the management of Eastern Coalfields Limited is present. Case is fixed up today for appearance and evidence of workman witness. On repeated call at 1.10 p.m. none appears for S. Mahesh Sekhar, Electric Helper who has raised this Industrial Dispute claiming House Rent Allowance from January 2021.

3. The record reveals that Mr. Bipul Banerjee, learned advocate, appeared for the workman on 21.11.2022 and case was fixed up on 13.02.2023 for filing written statement by workman and for his evidence. On that date, no step was taken by the workman and case was fixed for ex-parte hearing on 25.04.2023. Mr. Bipul Banerjee, learned advocate appeared on 25.04.2023 and filed a written statement along with an application for setting aside order for ex-parte hearing. Prayer was allowed and case was fixed on 23.08.2023 for evidence of workman witness. On 23.08.2023, the workman appeared and prayed for adjournment on the ground of absence of his advocate. Case was once again adjourned to 07.02.2024 for evidence of workman witness. On 07.02.2024 none appeared for the

management and for ends of justice the case is fixed up today for appearance and evidence of workman witness. Since no step has been taken by the workman and none appeared today, I am of the considered view that the workman is not diligent in participating in this case. The same is dismissed for default. Let a No Dispute Award is drawn up.

Hence,

O R D E R E D

that a No Dispute Award be drawn up in the above Reference case. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 12 अगस्त, 2024

का.आ. 1575.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय**,आसनसोल के पंचाट (सन्दर्भ संख्या **04/2019**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **07/08/2024** को प्राप्त हुआ था।

[सं. एल.-22013/01/2024-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 12th August, 2024

S.O. 1575.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No.04/2019** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on 0***7/08/2024.***

[No. L-22013/01/2024 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

APPLICATION NO. 04 OF 2019

PARTIES: Pappu Kumar Kewat

Vs.

Management of Naba Kajora Colliery of ECL.

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 19.07.2024.

A W A R D

1. The Application under sub-section (2) and (3) of Section 2A of Industrial Disputes (Amendment) Act, 2010 is fixed up today for recording evidence of workman. Mr. Rakesh Kumar, Union representative for the petitioner

Pappu Kumar Kewat and Mr. P. K. Das, learned advocate for the management of Eastern Coalfields Limited are present.

2. The said application has been filed before this Tribunal, supported by a Certificate issued by the Conciliation Officer under Section 2A of the Industrial Disputes Act, 1947 dated 20.11.2018, certifying that Mr. Rakesh Kumar, President of Koyala Mazdoor Congress raised an Industrial Dispute under Section 2A of the Industrial Dispute (Amendment) Act, 2010 before the office of the Assistant Labour Commissioner (Central), Raniganj at Durgapur consequent upon the termination of Pappu Kumar Kewat, General Mazdoor, U.M. No. 187970 from the service of the company w.e.f. 01.07.2017 by the management of Naba Kajora Colliery under Kajora Area of Eastern Coalfields Limited. Since no settlement was reached within the mandatory period of forty-five days a Certificate was issued in favour of the Union for the purpose of enabling it to approach the Central Government Industrial Tribunal -cum-Labour Court for adjudication of the said dispute.

3. In this application under sub-section (2) and (3) of Section 2A of Industrial Disputes (Amendment) Act, 2010, the applicant prayed for his reinstatement in service with full back wages and with all other consequential benefits.

4. The case is fixed up today for the fifth time for evidence of the workman witness. On repeated calls at 12.00 noon the workman is not found available. Since filing of the application on 08.04.2019 the workman has not appeared before the Tribunal for once. Mr. Rakesh Kumar, union representative filed an application stating that the workman was informed at his native place but he did not turn up today and could not be traced. He prayed for closing the case. Since the workman is not interested to proceed, the industrial dispute challenging the dismissal of Pappu Kumar Kewat is dismissed for non-prosecution. Let a No Dispute Award be drawn up accordingly.

Hence,

O R D E R E D

The Application under sub-section (2) and (3) of section 2A of the Industrial Disputes Act, 1947 is dismissed. Let a No Dispute Award be drawn up in respect of the above Industrial Dispute. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 12 अगस्त, 2024

का.आ. 1576.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**,आसनसोल के पंचाट (सन्दर्भ संख्या **43/2005**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **07/08/2024** को प्राप्त हुआ था।

[सं. .एल.-22012/199/2004-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 12th August, 2024

S.O. 1576.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No.43/2005** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on 0***7/08/2024.***

[No. L-22012/199/2004–IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 43 OF 2005

PARTIES: Raj Kishore Harijan

Vs.

Management of Parasea Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL: Mr. P. K. Goswami, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 10.07.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/199/2004-IR(CM-II)** dated 13.05.2005 has been pleased to refer the following dispute between the employer, that is the Management of Parasea Colliery under Kunustoria Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" *Whether the action of the management of Parasea O.C.P. over dismissing Sh. Rajkishore Harijan, Security Guard (Trainee) w.e.f. 18.9.93 is legal and justified? If not, to what relief the concerned workman is entitled and from which date?* **"**

1. On receiving Order **No. L-22012/199/2004-IR(CM-II)** dated 13.05.2005 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 43 of 2005** was registered on 31.05.2005 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. The Secretary of Koyala Mazdoor Congress filed written statement on 14.11.2005 on behalf of the aggrieved workman. Management of Eastern Coalfields Limited (hereinafter referred to as ECL) contested the case by filing written statement on 27.03.2007. The brief fact of the case disclosed in the written statement of the union is that Raj Kishore Harijan was appointed as an Underground Loader and the management of Parasea OCP posted him as a Security Guard (Trainee). On 09.07.1993 the workman was on duty in the second shift from 4.00 p.m. to 12.00 a.m. (midnight). At about 10.00 p.m. on 09.07.1993, he took permission from the Security Havildar to return home on the ground of his son's illness. Sri Krishna Singh, Security Havildar allowed Raj Kishore Harijan to leave the place of work on that night. At about 11.00 p.m. on 09.07.1993 some miscreants raided Parasea OCP and committed theft of three hundred feet Power Cable and snatched away company's gun allotted to another Security Guard. According to the union the incident took place in absence of Raj Kishore Harijan, who already left his duty, taking permission from his immediate superior and he is not responsible for the occurrence.

3. In connection with the incident a Charge Sheet was issued by the management of Parasea OCP bearing No. POCP/P&IR/C.S./93/367 dated 18.07.1993. According to the Model Standing Order, Raj Kishore Harijan was suspended by the management of Parasea OCP. It is contended that the Manager who issued the order of suspension is neither the Appointing Authority nor the Disciplinary Authority and furthermore the charge levelled against him is vague, baseless, false and motivated. Furthermore, management did not supply the copy of complaint, names of witnesses and the statement of the witnesses along with the Charge Sheet. The workman replied to the Charge Sheet, denying the allegation. After submission of his reply the workman was allowed to resume his duty from 26.07.1993. An enquiry was initiated in perfunctory manner. After the enquiry was held no 2nd Show Cause Notice was issued to the workman and he was dismissed from the service by a letter issued by the General Manager dated 18.09.1993. The union prayed for setting aside the order of dismissal and claimed that the punishment imposed is disproportionate to the charge and prayed for an order of reinstatement of workman along with full back wages and consequential relief.

4. Management in their written statement stated that the concerned workman was chargesheeted on 18.07.1993 under Clause 17(i)(a), 17(i)(f) and 17(i)(p) of the Model Standing Order. The concerned workman appeared before the Enquiry Officer and he was afforded reasonable opportunity to defend himself. After hearing the workman as well as management representative, the enquiry was completed and the workman was found guilty of misconduct, in respect of charges framed. A report was sent before the competent authority and he was dismissed from service according to the provisions of standing order. Management contended that the union has no locus standi to raise this Industrial Dispute, as the workman was not a member of the union at any point of time. It is contended that the order

of dismissal was issued by letter dated 18.09.1993 but the union raised the dispute for the first time on 15.04.2004, i.e. after a lapse of a decade without showing any reason of delay. It is urged that the workman having left his place of work, does not deserve any leniency in the matter of imposition of punishment. He is earning his livelihood from other source as such he is not entitled to any monetary benefit. Management therefore prayed for dismissal of the case.

5. The sole question for consideration of this Tribunal is whether the dismissal of Raj Kishore Harijan w.e.f. 18.09.1993 is legal and justified and if the concerned workman is entitled to any relief.

6. In course of proceeding before this Tribunal Raj Kishore Harijan submitted his affidavit-in-chief where he stated that on 09.07.1993 he was under training as a Security Guard working in the second shift i.e. 4.00 p.m. to 12.00 a.m. Due to his son's serious illness, Mr. Sri Krishna Singh, the Security Havildar allowed him to go home at 10.00 p.m. that night. On the same night at about 11.00 p.m. some miscreants raided Parasea OCP working site and committed theft of Power Cable and snatched company's security guard which was issued to another security guard. He also stated that the incident did not occur during his duty hours and that the management issued the Charge Sheet after nine days as an afterthought to victimize the charged employee and save other persons. The witness asserted that the enquiry was held in a perfunctory manner and without issuance of 2nd Show Cause Notice, the workman was dismissed from service from 18.09.1993. He further stated that he performed his work with loyalty and there was no adverse report against him. the workman prayed for his reinstatement and claimed back wages and consequential reliefs. In course of his re-examination-in-chief on recall the Workman Witness - 1 produced the following documents :

(i) Copy of the Charge Sheet dated 18.07.1993 has been produced as Exhibit W-1.

(ii) Copy of the reply against the Charge Sheet, as Exhibit W-2.

(iii) Copy of the letter dated 26.07.1993 issued by the Manager, Parasea OCP addressed to Raj Kishore Harijan, as Exhibit W-3.

(iv) Copy of the reply to the Enquiry Notice, as Exhibit W-4.

(v) Copy of the letter for nominating co-worker for the Enquiry Proceeding, as Exhibit W-5.

(vi) Copy of the Enquiry Proceeding in sixty pages, as Exhibit W-6.

(vii) Copy of the Enquiry Report dated 18.09.1993, as Exhibit W-7.

(viii) Copy of the letter for dismissal dated 18.09.1993 issued by the General Manager of Kunustoria Area, as Exhibit W-8.

7. In his cross-examination the workman admitted that he participated in the Enquiry Proceeding. He also produced a copy of the reply to the Enquiry Notice as Exhibit W-4. He was provided with the assistance of co-employee during the Enquiry Proceeding and the copy of Enquiry Proceeding in sixty pages has been produced by him as Exhibit W-6. During Cross-examination the workman stated that he participated in the Enquiry Proceeding on a regular basis and did not have complain against anybody nor did he have any grievance against any co-worker. The workman admitted that he was on duty at the time Power Cable was stolen from the site of work. The witness denied that his dismissal from service was proper and justified.

8. Initially management filed affidavit-in-chief of Mr. Raj Narayan Bhattacharjee, Senior Manager (Personnel), Parasea Group of Mines as Management Witness. Since the witness was not found available to stand the test of cross-examination, the affidavit-in-chief of Mr. Raj Narayan Bhattacharjee has no value in the eye of law. Mr. Soram Sanjoy Singh, Manager (Personnel), Parasea Colliery, examined himself as Management Witness – 1. He filed his affidavit-in-chief on 29.05.2023. It is stated in his affidavit-in-chief that Raj Kishore Harijan and one Chottu, his co-worker, were posted as Security Guards on 09.07.1993 having duty hours from 04.00 p.m. to 12.00 midnight. At about 11.00 p.m. when the workman was engaged on duty some miscreants decamped three hundred feet of Power Cable and snatched the gun from a Security Guard. It was reported that Raj Kishore Harijan and his co-worker, Chottu were not present at the place of their duty for which Charge Sheets were issued to them on 18.07.1993, seeking explanation. The reply submitted by Raj Kishore Harijan was not found satisfactory and a Departmental Enquiry was initiated against him. After going through the Enquiry Proceeding and Enquiry Report, the order of dismissal was passed against Raj Kishore Harijan. It is stated that the ex-workman is not entitled to any relief. The witness identified and admitted the documents produced by the workman as Exhibit W-1 to W-8.

9. In cross-examination the management witness stated that leaving workplace earlier than the normal duty hours was sufficient to hold the workman guilty of the charge. The employee left the workplace one and half hours before the expiry of duty hours and the occurrence took place at 11.00 p.m.

10. Mr. Rakesh Kumar, President, Koyala Mazdoor Congress, arguing the case for the dismissed workman submitted that Raj Kishore Harijan was on duty at the work site on the night of 09.07.1993 and by taking leave from Mr. Sri Krishna Singh, Havildar, left the place of duty at 10.20 p.m. It is submitted that in the Charge Sheet dated

18.07.1993 (Exhibit W-1) charges were levelled under Clause 17(i)(a) of Model Standing Order for theft of Company's property, Clause 17(i)(f) of Model Standing Order for neglect of work, and Clause 17(i)(p) of Model Standing Order for leaving work without permission or sufficient reason. The workman submitted his reply against Charge Sheet (Exhibit W-2) claiming that the Security Havildar allowed them to leave the work site early for catching vehicles on 09.07.1993 at 10.45 p.m. He had left his workplace and the incident of theft and snatching of gun took place during absence of the charged employee for which he is not responsible and prayed for withdrawing of Charge Sheet issued against him.

11. Referring to the Enquiry Proceeding (Exhibit W-6) Mr. Kumar argued that in course of enquiry the statement of Sri Krishna Singh, Security Havildar was recorded by the Enquiry Officer as MW–2 and it appeared from his statement that on 09.07.1993 he was on duty at the work site of Parasea OCP from 04.00 p.m. to 12.00 midnight. As the Armed Guard was absent Sri Krishna Singh and Chottu performed the duty of Armed Guard. At about 04.15 p.m. Gulbadan Harijan, Security Guard joined duty as there was shortage of security personnel. The union representative traversing the statement of Sri Krishna Singh, submitted that the Havildar has also admitted the fact that he permitted Chottu and Raj Kishore Harijan to leave the workplace before their normal duty hours was over and later he handed over the Gun and Cartridge of Chottu to one Nilmuni at 10.40 p.m. who came to join the third shift. It is argued that the occurrence of theft and snatching of Gun took place during the absence of Raj Kishore Harijan and there is no material to hold Raj Kishore Harijan was guilty of charges of neglect of work, leaving the place without permission or theft. It is argued that no 2nd Show Cause Notice was served upon the workman. Therefore, the order of dismissal, without providing any opportunity to the workman to submit his representation in respect of the findings against him, is in violation of natural justice. It is argued that the order of dismissal passed against the aggrieved workman is not tenable under the law and is liable to be set aside. Besides, the workman has suffered unnecessarily requires to be reinstated in service and he should be paid the back wages for the period of his entire dismissal along with consequential relief.

12. Mr. P. K. Goswami, learned advocate for the management of ECL argued that in cross-examination the workman witness stated that he left his place of work due to illness of his son but in his reply to the Charge Sheet (Exhibit W-2), the workman stated that in the night shift the security Havildar on duty is aware about the fact that they are allowed to leave the work site early for availing the vehicle provided by the company. It is argued that there is no whisper in the reply to the Charge Sheet that on that night any emergency arose due to illness of his son or he left the place early after obtaining permission from his superior. Learned advocate further argued that admittedly the workman was absent from his place of duty giving rise to such incident which occur due to shortage of Security Personnels and Armed Guard at the work site. Mr. Goswami finally argued that the workman in his cross-examination admitted that he had no grievance about the enquiry proceeding and the Industrial Dispute has been raised in the year 2005 after passage of more than ten years from the date of dismissal. Learned advocate argued that the charge of negligence in work and leaving workplace without permission of the authority has been proved against the workman and the charge under Clause 17(i)(a), 17(i)(f) and 17(i)(p) of the Model Standing Order has been proved against the workman beyond doubt and there is no extenuating circumstance to absolve him of the charge or for setting aside the order of dismissal. It is contended on behalf of the management that non-issuance of 2nd Show Cause Notice ipso facto cannot demolish the case against the workman and he is not entitled to any relief.

13. I have considered the facts and circumstances of this case, argument advanced on behalf of both parties as well as the materials on record. Admittedly, Raj Kishore Harijan was on duty at the work site of Parasea OCP on the night of 09.07.1993 as a Security Guard. He left the place of work about one and half hours prior to completion of duty hours i.e. 12.00 midnight. On that night an incident took place at 11.00 p.m. when some miscreants committed theft at the company's site by stealing three hundred feet of Power Cable and snatched a Gun from company's Armed Guard. In their written statement, union emphatically stated that the enquiry was held in a perfunctory manner and that the management failed to prove that the Enquiry Officer had been appointed in the case and the letter of appointment was served upon the workman. During his examination-in-chief on recall WW-1 produced a copy of Charge Sheet and the reply submitted by him against the Charge Sheet. Copy of the reply to the Enquiry Notice is produced as Exhibit W-4 and the charged employee admitted in evidence that he participated in the enquiry proceeding. Exhibit W-5 establishes the fact that a co-worker was nominated to assist the workman in the Enquiry Proceeding. Copy of the Enquiry Proceeding has been produced as Exhibit W-6 and Enquiry Report, as Exhibit W-7 collectively. The order of dismissal issued by the General Manager of Kunustoria Area has been produced as Exhibit W-8. In re-cross-examination the workman admitted that he had no complain against anybody nor grievance against any co-worker. He also admitted the fact that he was on duty when the cable was stolen. There is no evidence on record that the charged employee left the workplace for any proper reason. He did not have approval from proper authority to leave the place of work despite the fact that Sri Krishna Singh, the Havildar had allowed Raj Kishore Harijan and Chottu to leave the workplace on that night. In cross-examination Mr. Soram Sanjoy Singh, the management witness deposed that Sri Krishna Singh, Havildar was not the controlling authority of the charged employee and the Manager of the Colliery is the controlling authority. Therefore, it goes without saying that Sri Krishna Singh did not have the authority to permit Raj Kishore Harijan to leave his work place on the night of occurrence. It also transpires from the cross-examination of the MW-1 that an FIR was lodged at the Andal Police Station regarding the incident of theft and snatching of Fire Arms. The evidence on record is rife to hold that the

charge against Raj Kishore Harijan, under Clause 17(i)(f) and 17(i)(p) have been proved. There is no case that the theft had been committed by the charged workman. Accordingly, there is no material on record to hold that the charge under Clause 17(i)(a) was proved against the workman. Be that as it may there is sufficient material on record to hold that Raj Kishore Harijan was guilty of neglecting his duty by leaving his workplace without any sufficient reason. The only irregularity of the management in this case is that, no 2nd Show Cause Notice was issued to the workman for submitting his reply against the findings of the Enquiry Officer in the Domestic Enquiry. It is evident that the management did not comply the mandate of the Hon'ble Supreme Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471],** the Hon'ble Supreme Court of India laid down the law as follows:

" When the Inquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the inquiry officer's report before the Disciplinary Authority arrives at its conclusion with regard to the charges levelled against him. A denial of the inquiry officer's report before the Disciplinary Authority takes its decision on the charges, is denial of opportunity to the employee to prove his innocence and is a breach of principles of natural justice."

The principle of law laid down by the Hon'ble Supreme Court of India was enforced by the Coal India Limited by way of issuing a Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994, wherein it has been clearly laid down that the charged employee had to be supplied with Enquiry Proceeding and Enquiry Report and a 2nd Show Cause Notice had to be issued to him before taking any final decision of removing him from service. In the instant case I find that the management has been unmindful of the mandate and failed to observe the pre-requirement before passing the final order of dismissal.

14. There is a clear non-compliance of a guiding principle on the part of the management. However, it is also to be borne in mind that after dismissal of the workman on 18.09.1993, the instant Industrial Dispute has been raised by the union after passage of ten years from the date of the dismissal. In view of the nature of charge established against Raj Kishore Harijan with succinct evidence and the inordinate delay of ten years in raising the Industrial Dispute from the date of dismissal, I do not find any cogent reason for interfering with the order of dismissal, only for non-issuance of 2nd Show Cause Notice. Non-issuance of 2nd Show Cause Notice before dismissal amounts to an irregularity but does not destroy the findings of the Enquiry Officer. Under the facts and circumstances and long lapse of time I do not find it appropriate to interfere with the order of dismissal. The workman having been found guilty of neglecting his work by leaving his work place without sufficient reason cannot seek reinstatement or back wages.

15. In the case of **Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others [2010 (6) SCC 773]**, the Hon'ble Supreme Court of India laid down as follows:

" 9. In the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate."

16. Drawing wisdom from the aforesaid decisions of the Hon'ble Supreme Court of India in matters involving termination of employees, I find it appropriate to allow a monetary compensation of Rs. 2,00,000/- (Rupees two lakhs only) to the dismissed workman for his termination from service without issuing a 2nd Show Cause Notice. The dismissed workman is not entitled to any relief of reinstatement nor back wages in this case.

Hence,

O R D E R E D

that the Industrial Dispute is allowed in part in favour of the workman. His prayer for setting aside the order of dismissal and reinstatement in service with back wages is disallowed. The workman is allowed a monetary compensation of Rs. 2,00,000/- (Rupees two lakhs only) in lieu of reinstatement and back wages, to be paid by the management of the company within two (2) months from the date of communication of this Award. Let an award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

का.आ. 1577.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय कंटेनर निगम लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 1 दिल्ली के पंचाट (261/2018) प्रकाशित करती है।

[सं. एल-12025/01/2024- आई आर (बी-I)-203]

सलोनी, उप निदेशक

New Delhi, the 12th August, 2024

S.O. 1577.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.261/2018*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -1 Delhi* as shown in the Annexure, in the industrial dispute between the management of Bhartiya Container Nigam Limited and their workmen.

[No. L-12025/01/2024- IR(B-I)-203]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1

ROOM NO.207, ROUSE AVENUE COURT COMPLEX,

NEW DELHI.

ID No.261.2018

Sh. Bhup Lal S/o Sh. Chandi Ram

Through All India General Mazdoor Trade Union (Regd. 3025)

170, Bal Mukund Nagar, Giri Nagar,

Kalkaji, New Delhi-110019 Claimant…

Versus

1. Chief Manager,

Bhartiya Container Nigam Limited,

Address: C-3, Mathura Road, Opposite Apollo Hospital,

New Delhi-110076.

2. M/s 3455 Sanjay Rana Security Agency,

F-20, Manish Global Mall Sector-22, Dwarka,

New Delhi-110077

Management…

AWARD

1. This is an application Under Section 2A of the I.D. Act whereby, the applicant made prayer that his termination from the service on 16.01.2018 by the management which be declare illegal and unjustified and he be reinstated with full back wages, it is the case of the applicant/workman that he has been working with the management. He has not been provided any legal facilities. He was illegally terminated from his service on 16.01.2018 without any rhyme or reason and without conducted any domestic enquiry by the management. He has initiated the conciliation proceeding but, no result. Hence, he had filed the present claim petition.

2. Management No.2 is not appearing since long therefore they are proceeded ex-parte. However, the management no.1 has appeared and filed the written statement. Thereafter, case was listed for filing of rejoinder and framing of issues on the basis of pleadings. Despite providing a number of opportunities, claimant have not appeared to substantiate his claim.

3. Hence, in these circumstances this tribunal has no option except to pass the no dispute award. No dispute award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 23.04.2024

नई दिल्ली, 12 अगस्त, 2024

का.आ. 1578.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बंगीय ग्रामीण विकास बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **कोलकता** के पंचाट (03/2020) प्रकाशित करती है।

[सं. एल-12011/54/2019- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 12th August, 2024

S.O. 1578.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.03/2020*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of Bangiya Gramin Vikash Bank and their workmen.

[No. L-12011/54/2019- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 03 OF 2020

Parties: Employers in relation to the management of

Bangiya Gramin Vikash Bank

Versus

Bangiya Gramin Vikash Bank Casual and Contractual Workers Union.

Appearance:

On behalf of the BGV Bank: Absent

On behalf of the Union: Mr. Mr.Suvadip Bhattacharjee, Ld. Advocate

Dated: 19th June, 2024

A W A R D

The Central Government, Ministry of Labour vide Order No. L-12011/54/2019- IR(B-I) dated 23-12-2019 and in exercise of the power conferred under section 10(1)(d) and (2A) of the Industrial Dispute Act, 1947 has referred the following dispute to this Tribunal for adjudication.

"Whether the action of the employer (Bangiya Gramin Vikash Bank), Murshidabad by not enhancing the minimum rates of wages from 01-01-2012 to 30-06-2019 of Casual daily rates workmen deployed in various branches of Bangiya Gramin Vikash Bank without giving Notice of change u/s 9A of I.D.Act, 1947, is legal and/or justified? If not, what relief the workers are entitled to?"

The facts necessary for determination of the present dispute in gist are that Bangiya Gramin Vikash Bank, a Govt. of India Enterprise having its headquarters at Berhampore, Dist. Murshidabad, West Bengal, has been formed by virtue of Government of India Notification dt.21-02-2007 amalgamating five constituent erstwhile Regional Rural Banks namely Gour Gramin Bank, Mallabhum Gramin Bank, Sagar Gramin Bank, Nadia Gramin Bank and Murshidabad Gramin Bank and governed by Regional Rural Banks Act, 1976. The Bank has 587 branches controlled by 11 Regional Offices in 12 districts in the State of West Bengal.

However, it is the case of the union which has espoused the dispute that there was no post of Messenger/Peon/Sub-Staff in the Regional Rural Banks before 08-10-1984. Therefore, the bank used to engage daily rated casual/ part time/ temporary workers for the post of Messenger/Sweepers for smooth functioning of the banking business and administrative activities.

Further, it has alleged that Bank has indulged in unfair labour practice and continued with the practise of engaging casual daily rated workers to do the job of sub-ordinate permanent staff in order to save revenue which is otherwise payable to the permanent staff.

It has also alleged that the bank follows State Govt. scale of pays to its different category of staff. There is no scale of pay for the post of Messenger/Peon. That on regularisation of some daily rated Messengers, as a full time regular Messenger, they are paid salary at the scale of pay of Peons or Grade-4 staff of the State Govt.

The bank are getting perennial nature of job which is normally rendered by regular subordinate staff by engaging part time casual daily rated workmen in the post of Messenger /Peon/sweeper without filling up the vacant posts and pay wages on 'no work no pay' basis.

Govt. of West Bengal have revised ad-hoc wages to its Gr. D employees by issuing several circulars from 2010 onwards, but bank has failed to revise the wages of its casual daily rated messenger/sweepers since 2012 till 2019. That they are entitled to get revision of their ad-hoc wages at par with the State Govt. Gr.D employees and as per Minimum Wages Act, 1948.

Therefore, the union has alleged that the action of the management of Bangiya Gramin Vikash Bank not enhancing the minimum rates of wages from 01-01-2012 to 30-06-2019 of casual daily rates workmen deployed at its various branches to be illegal. It has also prayed that necessary direction may be given to the bank to pay arrear adhoc wages w.e.f. 01-01-2012 to 30-06-2019 in accordance with relevant orders of Govt. of West Bengal, with P.F. facility and enforcement of the provisions of the Payment of Minimum Wages Act, 1948 on the basis of equal pay for equal work as per Govt. of India order No.49014/1/2017-Estt (C) H dt.04-09-2019 w.e.f. 01-07-2019 with P.F. facility to its eligible temporary workers and also for regularisation of those casual workmen who have rendered more than 240 days service to the bank in a calendar year against the post of regular Office Attendant (Multipurpose).

Record shows the bank had put appearance through Ld. Counsel Mr. M. G. Mokaram Hossain on 27-09-2022 and who undertook to file Vokalatnama but thereafter bank failed to put appearance and contest the case. Therefore, the present case has been proceeded exparte against the bank.

The union to prove its case and claim has examined Sri Anadi Kumar Mahato, Vice President of the Union as W.W.1. The union has produced the following docuemnts:-

1. Copy of bank circular dt.15-01-2011 regarding outsourcing in absence of regular sub-staff at branches in case of urgent and unavoidable need- revision of rate of daily wage as per Govt. of West Bengal Minimum Rate of Wages thereof and which has been marked as Exb.W-1.

2. Copy of memorandums dt.23-11-2010, 12-12-2011, 31-12-2012, 09-01-2015, 14-12-2015 and 21-06-2018 issued by Govt. of West Bengal, Finance Department, Audit Branch granting Dearness Allowance to the State Govt. employees and further ad-hoc increase in the wages of daily rated workers under the Govt. w.e.f. 01-12-2010 and which have been marked as Exb. W-2 to W-2/E.

3. Copy of letter dt. 18-01-2018 of Govt. of West Bengal, Office of the Labour Commissioner regarding rates of daily wages of daily rated workers under the Govt. of West Bengal whose wages are not regulated by any of the statutory provisions like the Minimum Wages Act etc. and which has been marked as Exb.W-3.

4. Copy of letter dt.05-11-2019 of NABARD with regard to implementation of Minimum Wages Act, 1948- Revised Rates issued to the Chairman of all RRBs and which has been marked as Exb.W-4.

5. Copy of order dt.23-09-2019 of Govt. of India, Ministry of Labour and Employment regarding rates of V.D.A. for employees employed in sweeping and cleaning excluding activities prohibited under the Employment of Manual Scavengers and Construction of Dry Latrine (Prohibited) Act, 1993 and to industrial workers along with classification of area and which has been marked as Exb.W-5.

6. Copy of office memorandum dt.04-09-2019 issued by Govt. of India, Ministry of Personnel, PG & Pension, Department of Personnel & Training regarding equal pay for equal work for casual workers in compliance of the Hon'ble Court's judgments and with regard to payment of minimum rate of wages to the casual workers and non-employment of daily wagers for doing regular nature of work and which has been marked as Exb.W-6.

7. Circular dt.30-07-2019 of Bangiya Gramin Vikash Bank regarding revision in rate of wages of daily waged labour (outsourced) in absence of regular Office Attendants at Branches in case of urgent and unavoidable need and which has been marked as Exb.W-7.

8. Copy of NABARD's letter dt.20-06-2019 to the Chairman of all RRBs regarding direction issued to Labour Commissioners for compliance or adherence to the provisions of Minimum Wages Act, 1948, Manpower Planning as per Mitra's Committee's recommendation in a conciliation proceeding and which has been marked as Exb.W-8.

9. Circular dt.24-06-2019 issued by Govt. of West Bengal, Office of the Labour Commissioner, fixing minimum rate of wages from 1st July, 2019 to 31st December, 2019 and which has been marked as Exb.-W-9.

10. Copy of circular issued by Andhra Pradsh Grameena Vikash Bank dt.08-05-2017 and which has been marked as Exb. W-10.

11. Copy of circular dt.25-10-2016 issued by Pragathi Krishna Gramin Bank, with regard to rules of engagement of casual workers by Branches and which has been marked as Exb. W-11.

12. Copy of circular dt.09-11-2016 issued by Pragathi Krishna Gramin Bank, with regard to rate of payment of wages to casual workers and which has been marked as Exb. W-11/A.

13. Copy of circular dt.27-06-2017 issued by Pragathi Krishna Gramin Bank, with regard to revision in payment of wages to casual workers and which has been marked as Exb. W-11/B.

14. Copy of circular dt.21-05-2015 issued by Chaitanya Godavari Grameena Bank, with regard to regularisation of Messengers-cum-Sweepers/Daily Wage Workers working on casual basis/casual labour as Office Attendants (Multi-purpose) along with list of candidates and which has been marked as Exb. W-12.

15. Copy of bio data of Sri Jagannath Mondal along with his Aadhar Card, Voter Identity Card, Ration Card and which have been marked as Exb.W-13.

16. Copy of Asst. P.F. Commissioner's letter dt.11-08-2014 regarding non-extension of schemes framed under the Employees Provident Funds & Miscellaneous Provisions Act, 1952 in respect of the casual employees of Bangiya Gramin Vikash Bank, Bankura along with list of those employees and which has been marked as Exb.-W-14.

17. Copy of Attendance Sheet of Sri Jagannath Mondal from 2001 to 2018 and which have been marked as Exb.-W-15 (collectively).

18. Copy of Bank Pass Book of Sri Jagannath Mondal with Bangiya Gramin Vikash Bank, Haludkanali Branch, Bankura and which has been marked as Exb.W-16 (collectively).

19. Copy of Bio-data of Sri Lalchand Patar along with Voter Identity Card and Aadhar Card and which have been marked as Exb.W-17.

20. Copy of representation of Sri Lalachand Patar to the Chairman, Bangiya Gramin Vikash Bank dt.25-08-2011 for regularisation of service of the post of Gr.C cadre along with his bio data and which have been marked as Exb.W-18.

21. Copy of representation of Sri Lalchand Pata dt. 11 -02-2012 to the Regional Manager, Bangiya Gramin Vikash Bank for regularisation /absorption along with bio-data and which has been marked as Exb.-W-18A.

22. Copy of another Representation of Sri Lalchand Patar dt.07-10-2011 to the Regional Manager, Bangiya Gramin Vikash Bank, Bankura and which has been marked as Exb.W-18B.

23. Copy of another representation of Sri Lalchand Patar to the Chairman, Bangiya Gramin Vikash Bank for payment of bonus and which has been marked as Exb.W-18/C.

As per order of reference, the dispute that need to be adjudicated by this Tribunal is whether the action of the management of Bangiya Gramin Vikash Bank in not enhancing the minimum rates of wages from 01-01-2012 to 30-06-2019 to its casual daily rates workmen is justified or not and what other relief the workmen are entitled.

However, the union in its claim statement has added further prayer for granting P.F. facilities to those casual daily rated workers along with regularisation as they have put more than 240 days of continuous service in a calendar year.

Be that as it may, first let me find out whether Bangiya Gramin Vikash Bank has failed to pay Minimum Rate of Wages to its daily rated casual workmen engaged at its different branches since 2012 to June, 2019?

For determination of this issue it is necessary to find out whether Bangiya Gramin Vikash Bank a Govt. of India enterprise and which has been formed by virtue of Govt. of India Notification dt. 21-02-2007 and is governed by Regional Rural Banking Act, 1976 is required to make payment minimum rate of wages to its casual daily rated employees as per Minimum Rate of Wages fixed by the Govt. of West Bengal or by the Central Govt.?

Exb. W-4 proves that RRBs are regulated and controlled by NABARD. By issuing Exb .W-4 NABARD has directed the Chairman of all RRBs situated throughout India to adhere to the Minimum Wages Act, 1948 and has enclosed order no. 1/36(5)/2019/LS-II dt.23-09-2019 issued by the Office of the Chief Labour Commissioner,

Ministry of Labour and Employment, Govt. of India and advised to comply with the instruction contained in the order of the Chief Labour Commissioner, Govt. of India, wherever applicable.

Exb.W-5 appears to be Order no. 1/36(5)/2019/LS-II dt.23-09-2019 issued by the Office of the Chief Labour Commissioner, Ministry of Labour and Employment, Govt. of India vide which revised the rates of VDA for industrial workers w.e.f. 01-10-2019 for different class of areas.

Exb. W-6 Office Memorandum dt.04-09-2019 issued by Govt. of India, Ministry of Personnel, PG & Pension, Department of Personnel & Training regarding equal pay for equal work for casual workers in compliance of the Hon'ble Court's judgments shows that where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of $1/30^{th}$ of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

In case where the work done by casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour & Employment or the State Government/Union Territory Administration, whichever is higher as per Minimum Wages Act, 1948.

Persons on daily wages (casual workers) should not be recruited for work of regular nature and directed all Ministries and Departments to follow the above direction.

Therefore, from the above exhibited documents it is seen the Bangiya Gramin Vikash Bank, a Govt. of India enterprise, though located in the State of West Bengal, is required to make payment minimum rate of wages, to its casual employees who are engaged to do work which is not done by a regular employee either State Minimum Rate of Wages or Central Minimum Rate of Wages whichever is higher or in case those casual workmen are employed to do the work which is done by regular employees then they are entitled to get $1/30^{th}$ of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

In the above premises, the Tribunal is of view the casual workers of Bangiya Gramin Vikash Bank are not entitled to claim minimum rate of wages which are paid to daily rated workers of the Govt. of West Bengal in view of Exb.W-2 series as claimed by the union.

Now, let us see whether the bank has indeed failed to pay minimum rate of wages either fixed by the State Govt. or by the Central Govt. to its casual employees in violation of Minimum Wages Act, 1948 for the period from January, 2012 to June, 2019 as alleged by the union and as reflected in the order of reference?

It is very unfortunate to note that union which has espoused the present dispute has failed to produce a single scrap of paper such as pay slips, payment vouchers and bank pass books of those casual employees from where it can be seen that Bangiya Gramin Vikash Bank had failed to adhere to the Minimum Wages Act, 1948 and failed to pay wages to its daily rated casual workmen engaged by it at its different branches to do the job of subordinate staff in the capacity of Office Attendant/ Messenger or Sweeper at the minimum rate of wage to which those workmen were entitled to.

Therefore, this Tribunal is of view by mere asserting that they have not been paid minimum rate of wages from 01-01-2012 to 30-06-2019 and without being supported by any documents will not by itself prove non-adherence of Minimum Wages Act, 1948 or non-payment of minimum rate of wages either fixed by State Govt. or by Central Govt. by Bangiya Gramin Vikash Bank.

Further, no detailed particulars of the casual employees engaged by the bank at its different branches have been filed by the union to prove how many persons have been engaged by the bank as casual employees at its 587 branches. No details of those casual workmen who are entrusted to do the work of regular employees and those who are engaged to do work which is not done by regular employees or to prove casual workers are appointed to do work of regular nature and period of their engagement have been furnished by the union to prove violation of Office Memorandum dt. 04-09-2019 issued by Govt. of India, Ministry of Personnel, PG & Pension, Department of Personnel & Training or to prove that those casual workmen have rendered more than 240 days of continuous service in a calendar year to the bank save and except the attendance register of only one workman named Sri Jagannath Mondal.

Therefore, this Tribunal is unable to decide that Bangiya Gramin Vikash Bank, having headquarter at Berhampore, Muradhidabad did not pay minimum rate of wages to its casual daily rated workmen engaged at its different branches from 01-01-2012 to 30-06-2019.

It is settled law that Tribunal has to confine itself within the four corners of the order of reference and it cannot go beyond it and decide an issue which is not referred to it. Therefore, this Tribunal is unable to decide the issue of regularisation and absorption as demanded by the union in its claim statement.

However, the union by producing the bio data of Sri Jagannath Mondal and his attendant register wants to obtain a universal order of regularisation and absorption of all daily rated casual workmen engaged by Bangiya Gramin Vikash Bank. If the union wants absorption and regularisation of the daily rated workers engaged by the bank

for doing perennial nature of job then the union has to furnish the sanctioned vacant post in the subordinate cadre on the date of reference, the list of those casual workers engaged by Bangiya Gramin Vikash Bank, Murshidabad at its 587 branches along with their details i.e. when they have joined the bank, the nature of their duty and the period since when they have been working and that too without any break, their educational qualification to qualify for the vacant sanctioned post of subordinate staff against which they want regularisation and absorption. Such claim of the union appears to be speculative.

Further, it is settled law absorption and regularisation cannot be a mode of recruitment. Bangiya Gramin Vikash Bank, being a Govt. of India enterprise has to follow its own recruitment rules and regulations. Just because a casual daily rated workman had put a long period of service will not mean that he is entitled to automatic absorption or regularisation against a permanent post. That there should be regular process of recruitment or appointment to fill up sanctioned vacant post as per applicable recruitment rules and regulations. Therefore, this Tribunal is of view that those casual workmen cannot claim to be absorbed or regularised against sanctioned permanent post without fulfilling the requirement qualification for the post and undergoing the rigour of recruitment process. Thus, this Tribunal finds Exb. W-10, Exb.W-11 and Exb-W-12 irrelevant for the purpose of determination of the present dispute.

However, Bangiya Gramin Vikash Bank is hereby directed to see that minimum rate of wages fixed by the Govt. of West Bengal or by Central Govt. whichever is higher is paid to all the daily rated workers engaged by it. The bank is further directed to adhere to the office memorandum dt.04-09-2019 or further such memorandum issued by Govt. of India, Ministry of Personnel, PG & Pensions, Department of Personnel & Training regarding equal pay for equal work for casual workers engaged by it. The bank is to see if the nature of work entrusted to the casual workers engaged by it are similar to that of regular employees then it is directed to pay at the rate of $1/30^{th}$ of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day. In case where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour & Employment or the State Government/ Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948.

Accordingly, Ref. No.03 of 2020 is disposed of and an award is passed to that effect.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1579.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त नारकोटिक्स विभाग के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (71/2019) प्रकाशित करती है।

[सं. एल-12025/01/2024- आई आर (बी-I)-210]

सलोनी, उप निदेशक

New Delhi, the 13th August, 2024

S.O. 1579.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 71/2019*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Commissioner Narcotics Departmentand their workmen.

[No. L-12025/01/2024- IR(B-I)-210]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/71/2019

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Dilip Kumar Ahirwar

S/o. Shri Narayan Das Ahirwar

R/o. Aditya Tailor, Bharat Talkies Road,

Sinde Ki Chhawani, Lashkar, Gwalior M.P.

Workman

Vs

Commissioner

Narcotics Department

19, Mall Road, Morar

Gwalior (M.P.) - 474006

Management

(J U D G E M E N T)

(Passed on this 01st day of July-2024)

As per letter dated 08/11/2019 by the Deputy Chief Labour Commissioner (Central), Jabalpur, Government of India, Ministry of Labour, the reference is received. The reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. J-1(1-11)/2019-IR dt. 08/11/2019. The dispute under reference relates to:

"Whether, the action of the management of Commissioner, Narcotics Department, Gwalior in terminating the services of workman Shri Dilip Kumar Ahirwar w.e.f. 27.08.2002 is just & proper ? If not, what relief the workman concerned is entitled to and from which date ?"

After registering a case on the basis of the reference, notices were sent to the parties and were served. Parties appeared and filed their respective statements of claim and defense.

The case of the workman is mainly that he was appointed/engaged by the Commissioner Narcotics in March-1995 and worked since then till 27.08.2002 to the satisfaction of the Department, when his services were terminated without any notice or compensation though he had worked for more than 240 days in every year including the year preceding his termination. This action of management is against the provisions of Section 25-F of the Industrial Disputes Act 1947 (in short the word 'Act'). He, alongwith other employees similarly situated filed a petition before the Central Administrative Tribunal Jabalpur which was registered as O.A. No.-560/2002 and was disposed vide order dated 27.03.2003 with certain directions.

Since, no compliance was made by the department, hence he alongwith similarly placed other employees filed another petition O.A. No.-208/2004 which was disposed by the Central Administrative Tribunal vide its order dated 18.10.2005 with certain directions in the order. This order was also not complied with, hence they again filed a petition before the Central Administrative Tribunal Jabalpur O.A. No.-386/2011 disposed vide order dated 20.08.2015. A writ petition was filed before Hon'ble High Court Gwalior Bench W.P. No.-7339/20015 but was withdrawn with liberty to raise an Industrial Dispute in this respect vide order of Hon'ble High Court dated 06.03.2018. Thereafter he raised a dispute before the Deputy Chief Labour Commissioner (Central) Jabalpur who made a reference to this Tribunal after failure of conciliation. The workman has sought the relief of his reinstatement with back wages and benefits setting aside his termination.

None appeared for management/department inspite of sufficient service of notice on them nor was any written statement of defense filed. Hence, the reference proceeded ex-parte against management vide order dated 22.10.2022.

In evidence, the workman filed his affidavit and photocopy documents which are mainly Judicial Orders.

I have heard argument of Mr. S.K. Mishra learned Counsel for workman and have gone through record. The uncontroverted affidavit of workman corroborates his case as pleaded in his statement of claim. Though he has filed photocopies of salary bills and attendance sheets but has not proved them.

Section 2(oo) and 25-F of the Act are being reproduced as follows :-

*2(oo) **"retrenchment"** means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include –*

***(a)** voluntary retirement of the workman; or*

***(b)** retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or*

***(bb)** termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or*

(c) termination of the service of a workman on the ground of continued ill-health;

25F. Conditions precedent to retrenchment of workmen.

- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month 's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

From the uncontroverted affidavit of the workman his engagement and continuous employment for more than 240 days in every year is held proved. The allegation that no notice or compensation was paid to him is also held proved.

Hence, in the light of above discussion, the termination of services of the workman is held in violation of Section 25-F of the Act.

As regards, the consequential relief, perusal of order of Central Administrative Tribunal dated 27.03.2003 passed in O.A. No.-563/2002 shows that the petition was disposed with following directions :-

1. In the event respondents have availability of work which has been earlier performed by applicants, they shall be considered for reengagement in preference to juniors and outsiders.
2. Respondents shall consider regularizing applicants against Group-D posts subject to their eligibility as per rules and availability of vacancy. In the O.A. No.-208/2004, the directions issued in the earlier O.A. 560/2002 with regard to engagement of the applicants.
3. In the 3rd petition O.A. No.-386/2011 and 805/2013 disposed by the Central Administrative Tribunal vide its order dated 20.08.2015 filed by the present workman alongwith similarly placed other co-workers. It was held that no direction could be issued in favour of the petitioners directing the respondents to regularize them.
4. In W.P. No.-7339/2015. The petition was permitted to be withdrawn.

In the light of aforesaid orders, the reinstatement of the workman with or without back wages will not be proper. This is so keeping in view the fact that the workman was not appointed against any sanctioned vacancy following recruitment process. In the light of judgment of Division Bench of Hon'ble High Court of M.P. at Jabalpur in W.A. No.-1467/2018 passed on 10.02.2022 against order of Single Bench of Hon'ble High Court passed against award regarding payment of compensation Rs. 75,000/-, passed by this Tribunal in case of a similarly placed workman Suneel Kumar Kushwaha, the compensation was raised to Rs. 3,00,000/- by the said order in writ appeal (copy on file), the present workman is held entitled to a lump sum compensation of Rs. 3,00,000/- in lieu of all his claims, to be paid by the management/ department within 30 days from the date of publication of award failing which interest @ of 8% per annum from the date of award till payment, will meet the ends of justice to which the workman is held entitled.

In the light of above discussion, the reference is answered as follows:-

Holding the action of the management of Commissioner, Narcotics Department, Gwalior in terminating the services of workman Shri Dilip Kumar Ahirwar w.e.f. 27.08.2002 unjust & improper, he is held entitled to a lump sum compensation of Rs. 3,00,000/- in lieu of all his claims, to be paid by the management/ department within 30 days from the date of publication of award failing which interest @ of 8% per annum from the date of award till payment.

DATE:- 01/07/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1580.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (29/2014) प्रकाशित करती है।

[सं. एल-12012/14/2014- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 13th August, 2024

S.O. 1580.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.29/2014*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India their workmen.

[No. L-12012/14/2014- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/29/2014

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Bhupesh Raikwar

S/o. Heeralal

Dhangar Mohalla, Balaganj

Mandsour (MP)

Workman

Versus

The Branch Manager,

State Bank of India,

Mandsour Branch, Krishi Upaj

Mandi Premises, Mandsour (MP)

Management

A W A R D

(Passed on this 08th day of July-2024.)

As per letter dated 23/04/2014 by the Government of India, Ministry of Labour, New Delhi as made this reference to the Tribunal under section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per reference number L-12012/14/2014/IR(B-I) dt. 23/04/2014. The dispute under reference related to :-

"Whether the action of management of the then State Bank of Indore now State Bank of India, Mandsour Branch in terminating the services of workman Shri Bhupesh Raikwar w.e.f. 12.10.2012 without following provisions of I.D. Act is justified ? To what relief the workman is entitled ?"

After registering the case on the basis of the reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

The case of the workman, in short is that the workman was appointed as Peon in Mandsour Branch of the Bank on 08.02.2001. He worked continuously till 12.10.2012. Thereafter he was terminated without notice or wages in lieu of one month notice and without payment of retrenchment compensation, in violation of the provision of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act, 1947). He had worked more than 240 days as

required under Section 25-B of the Act, 1947. He was not paid wages in the light of Bipartite Settlement which he was entitled to rather the management paid him sometimes in bogus names and on bogus bills raised in the name of bogus persons just to ensure that the workman did not mature any right to continue with the Bank. He requested that holding his termination against law, he be held entitled to reinstatement with back wages and benefits and also entitled to be regularized as a Peon in the bank from the date of his termination.

The management appeared and filed written statement in the case. **The case of the management**, inter alia, is that the alleged workman was neither employed as permanent employee nor attained permanent status. He worked as a casual worker for supply of water for few hours in a day as and when required in branch of the Bank and was paid for it. The provisions of the Section 25-F of the Act 1947 is not applicable and therefore, the question of giving notice or payment of retrenchment compensation does not arise. It was prayed that the reference be answered against the workman.

In evidence, the workman has filed his affidavit. He has filed and proved photocopy documents regarding letter dated 15.11.2014 of Bank, with photocopy of cheque showing that he was paid bonus Rs. 4785/- and also photocopy bonus calculation sheet which are Ex. W/1 & W/2, he has also filed is original passbook and has proved it.

Management did not file any affidavit of its witness or any document.

None appeared for workman at the time of argument. Mr. Pranay Chaubey appeared for management. I have heard his argument and have gone through the record.

The reference itself is the issue for determination.

The initial burden to prove its case is on the workman union. The workman has corroborated his allegations in his statement of claim. In his cross examination he admits that he was paid bonus for the days he worked. He further states that he was not paid bonus correctly. Also states that he did not make any complaint regarding in adequate payment of bonus and also regarding payment made by Bank to him in the name of bogus persons on bogus bills. The calculation sheet regarding bonus Ex. W/2, filed by the workman himself, admitted by management shows that he worked within the period 2004-05 to 2012-13 but in none of these years, he completed 240 days in employment. The maximum period he worked in 2011-12 was of 170 days. Hence, the claim of the workman that he worked continuously for 240 days in any year is held not proved. Accordingly, termination of his services by Bank is held not in violation of Section 25-F of the Act.

Hence, holding the claim of the workman union not proved, the reference deserves to be answered against the workman union and is answered accordingly. No order as to cost.

DATE: 08/07/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1581.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफॅ इंडिया के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (14/2023) प्रकाशित करती है।

[सं. एल-39025/01/2024- आई आर (बी-II)-33]

सलोनी, उप निदेशक

New Delhi, the 13th August, 2024

S.O. 1581.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.14/2023*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Bank of India their workmen

[No. L-39025/01/2024- IR(B-II)-33]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/14/2023

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Arjun Singh Ahirwar (Mali),

S/o. Late Shri Kishanlal Ahirwar,

House Number 62, Gali Number 2,

Barela Village, Lalghati,

Bhopal (M.P.)

Workman

Versus

The Deputy General Manager,

Bank of India, S.T.C., Arera Hills,

Bhopal (M.P.)

Management

A W A R D

(Passed on this 11th day of July-2024.)

As per letter dated 02/03/2023 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number J-1(1-19)/2022-IR dt. 02/03/2023. The dispute under reference related to :-

"क्या श्री अर्जुन सिंह अहिरवार, कर्मकार को बैंक ऑफ इंडिया, प्रबंधन, एस.टी.सी, अरेरा हिल्स, भोपाल (मध्य प्रदेश) व्दारा सेवा से निष्काषित किया जाना न्यायोचित है? यदि नहीं, तो उक्त कर्मकार को कब से और किन लामों के साथ कार्य पर पुनः बहाल किया जाना चाहिए?"

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of the allotment of time and service of notice, the workman never turned up and submitted his statement of claim. Management also did not file its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 11/07/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1582.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय**, हैदराबाद के पंचाट **(पहचान संख्या 129/2014)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **24/07/2024** को प्राप्त हुआ था।

[सं. एल.-22012/41/2014-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th August, 2024

S.O. 1582.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 129/2014*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, HYDERABAD** as shown in the Annexure, in the industrial dispute between the Management of **S.C.C.Ltd.** and their workmen, received by the Central Government on **24*/07/2024.***

[No. L-22012/41/2014 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**
Presiding Officer

Dated the 12th day of July, 2024

INDUSTRIAL DISPUTE No. 129/2014

Between:

The President (Bandari Satyanaryana),

Telengana Trade Union Council,

Raj Kumar Complex,

Saibaba Temple Road, Jaffar Nagar,

Mancherial -504 208. … .. Petitioner

AND

The General Manager,

M/s. Singareni Collieries Company Ltd.,

Mandamarri Area, Mandamarri -504231 …. Respondent

Appearances:

For the Petitioner : Sri S. Bhagwanth Rao, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

A W A R D

The Government of India, Ministry of Labour by its order No. L-22012/41/2014-IR(CM.II) dated 30.6.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Area, Mandamarri, Adilabad Distt. in terminating the services of Sri Edla Rajesh, Ex.Badli Coal Filler, RK-1 Inc., Mandamarri with effect from 27.11.2009 is justified or not? If not, to what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 129/2014 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

It is submitted that the Workman was appointed as an employee on 4th January, 2007 and he became permanent employee during the course of service in the company. The service conditions of the Workman are governed by various standing orders of the company. It is submitted that the Workman could not attend to his duties during the year 2008 due to his ill-health and the Respondent issued a show cause notice dated 30th January, 2009 and the Workman submitted his reply on 15th March 2009. The same was not considered by the Respondent company and Workman was dismissed from service through proceedings No.MMR/PER/B/072/09/5942, dated 17th November 2009. It is submitted that the Workman preferred an appeal to the higher authorities that went in vain and authorities have mechanically upheld the orders of Chief General Manager, Bellampally Division. It is submitted that the Workman has put in 3 years of continuous service without any red mark and the Workman still have 20 years of

service for superannuation. The removal of the service of the Workman who rendered more than 2 years of qualified service is arbitrary, illegal and against to the principles of natural justice and also against to the provisions of the Standing Orders of the Company. It is submitted that the Workman was given employment for the post as an Ex.Coal Filler subject to availability of vacancy of work. Whenever Workman used to go for job it was told that there was no work, as such it appears to be a contributory negligence. The intention of the company is crystal clear to remove the masses i.e., excessive labour and Company adopted unfair labour practice and victimisation. The Workman could not opt for Rs.3,00,000/- as compensation in lieu of employment, but opted for employment. Now the Workman has got re-option to claim compensation of Rs.5,00,000/- in lieu of dependent employment through settlements dated 20th November, 2009 if employment is not provided. The action of the Respondent amounts to hire and fire, which has no force in the industrial jurisprudence. It is submitted that there was settlement from 1.1.2000 to 31.12.2010 arrived before the Regional Labour Commissioner (C) at Hyderabad, that cases of those who were removed from 1st January, 2000 to 30th December, 2010, can be considered by the management as per the circular No.P.40/5911/IR/33, dated 10th March, 2000. The Workman was called for interview. But his case was not considered for reemployment as per the settlement. Had the Workman was given employment, he would have put in more than additional 20 years of service. It is submitted that the Respondent did not conduct enquiry properly and no documents were given to the Workman and no subsistence allowance was paid to him. The Respondent obtained thumb impressions on enquiry report and conducted inquiry and Workman do not know the English language and enquiry was conducted by the Respondent without mentioning the contents therein which is arbitrary, illegal and against the principles of natural justice. It is submitted that after his removal from service by the Respondent dated 13th October, 2008, Workman and his children were on roads with untold sufferings. Hence, prayed to direct the Respondent to reinstate the Workman into service with continuity of service and other attendant benefits with full back wages by setting aside the dismissal order dated 17th November 2009.

3. **Respondent filed counter denying the averments of the Petitioner as under**:

It is submitted that the Workman was appointed on 10/1/2007 as Badli Coal Filler. His date of birth is 22 May 1984. It is submitted that at the time of dismissal, Workman was working as badli coal filler at RK 1A Mine and not at RK.1 Mine as mentioned in the claim statement. It is submitted that the Workman was dismissed on proved charge of unauthorised absenteeism on 27/11/2009. It is submitted that the Workman failed to put in 190 actual musters in any of the calendar years during his service . It is submitted that badli fillers who have put in 190 musters in a calendar year will be reviewed for regularisation of their services as coal fillers against identified vacancies from time to time, but the Workman being irregular to duties did not put in 190 musters and hence he continued to work as badli filler only till the date of his dismissal. It is submitted that the Workman disqualified himself for regularization of his services as coal filler. During the year 2008, the Workman had put in only 66 actual attendances and remained absent to duties on the remaining days in the said calendar year which amounts to misconduct under Companies Standing Orders clause No.25.25, which reads as under:-

" S.O. No. 25.25: Habitual late attendance or habitual absence from duty without sufficient cause."

It is submitted that the Workman was issued with a charge sheet dated 22.1. 2009 while he was working at MK 4 Incline and Workman acknowledged the same. Workman has submitted his explanation dated 5.2.2009 stating that he was working as badli filler at MK 4 Incline and due to ill health of his mother, he went to their native village, i.e., Kothagudem and stayed there and Workman assured to be regular to his duties. But Workman did not substantiate the alleged ill health of his mother and about her treatment at Kothagudem and about his stay with her at Kothagudem by producing any documentary evidence. Since the explanation submitted by the Workman was not satisfactory an enquiry was ordered. It is further submitted that a detailed enquiry was conducted by the Enquiry Officer, duly following the principles of natural justice and giving every opportunity to the Workman to defend his case during the course of enquiry. Workman was offered the services of assistance of Co- worker or Trade Union Representative to assist the Workman during the course of enquiry but Workman denied this offer. The Enquiry Officer has explained the procedure in Telugu and the Workman having satisfied himself and understood the procedure, expressed his readiness to participate in the enquiry and the proceedings were recorded in English. The actual proceedings were held in Telugu only and at every stage, inquiry officer explained the recorded proceedings in Telugu to the Workman and Workman affixed his signature having satisfied himself. It is submitted that the Workman has accepted the charges and pleaded guilty of the Charge. It is submitted that Workman assured that he will be more careful in future and will not remain absent unauthorizedly. He did not avail the opportunity to cross examine the Presenting Officer. Workman requested to give him a month's time and assured to be regular and improve his attendance. Considering his assurance he was given one month time to enable him to improve his attendance vide letter dated 2.8.2009 with effect from 1.8.2009 with a condition to put in 16 filling musters in the month and fill two and more tubs per day. It is submitted that the Workman failed to improve his attendance and he did not put in even a single muster in August 2009. Further, he was given another opportunity for improving his attendance by giving two more months time. In these two months, he had put in 06 musters and 09 musters only in September and October 2009 respectively. His year wise attendance during the years: 2007-145 musters, 2008-066 musters and in 2009-059 musters. Workman was supplied with enquiry proceedings and report. But he did not dispute the same and requested only to allow him for duty and assured to be regular to duties. Hence, the

Respondent was left with no option except to impose penalty of dismissal and accordingly he was dismissed on 27th November, 2009 vide order No.MMR/PER/D/072/09/5942, dated 17th November 2009. It is further submitted that the Workman is showing one or other reason without proper and substantiating evidence. Mere stating causes of ill health without disclosing the nature of ailment and report of treatment, will not suffice. It is further submitted that the Workman should have reported sick in Colliery hospitals for treatment or get sanctioned leave to his credit or loss of pay leave instead of remaining absent from duties. In addition to the Workman, the Respondent company extends medical treatment to parents of the workmen, also in colliery dispensaries, Area hospitals and Main Hospital, Kothagudem wherein there are Specialised Medical equipment, specialist doctors available. But the Workman did not avail these opportunities. It is submitted that the Workman made a representation data 6.1.2010 to the Director(PA & W), Kothagudem and his representation was examined by the Appellate Authority taking into consideration the enquiry report, enquiry proceedings and other documents and his representation was disposed of through letter dated 5.3.2010 duly explaining the reasons for not considering his appeal. It is submitted that the Workman was given employment for the post as an ex.coal filler is totally incorrect. In fact, neither the Workman nor any of the badli filler have ever been rejected for providing employment because the badli fillers who ever attend duty will be provided work in the leave vacancies of regular employees. The Workman to overshadow his mistake and misconduct, is trying to blame the Respondent and terming it a contributory negligence which is denied. It is also submitted that unauthorised absenteeism among employees would dislocate the planned works and at times the Mine authorities are required to postpone some of the urgent works due to absenteeism among workforce and in the event of exigencies of works, the Mine management is required to engage employees on overtime also. Hence, the Respondent company is compelled to take severe action against absentee employees to administer discipline among the workforce. It is submitted that once employment is obtained and employment is given, it is the bounden responsibility of the employee concerned to abide by the rules and regulations of the company. He is required to attend duties regularly and if suffers from ill health, he got every opportunity to take treatment in Colliery Hospital and then the period would not have been considered as unauthorised absenteeism. He had to have applied for sanction of leave to his credit or loss of pay leave for sickness, which he did not do and not even communicated to the Mine Manager about his inability to attend to duties. It is submitted that Memorandum of Settlement was arrived at on 9.8.2011 with the then recognised Union AITUC. Under item No. 2 of the said memorandum of settlement, it was agreed to review the cases of those employees dismissed on the ground of absenteeism during the period 1.1.2000 to 31.12.2010 for review by High Power Committee headed by Director (PA & W) of Respondent company. The conditions for review by High Power Committee for considering the cases of eligible dismissed candidates for appointment are:- 1. The dismissed employee should be below 55 years on or before 9.8.2011; 2. He should have 190 musters in case of underground employee and 240 mustards in case of surface employee in any 2 calendar years out of the previous 5 years. Prior to the year of dismissal, or should have put in 150 masters in case of underground employees and 200 masters in case of surface employee in every year in the previous 4 years. In the present case, Workman also submitted application for considering his case for appointment and the Workman was called for interview by Hi-power Committee but the committee did not consider his case fit for giving appointment afresh as he is not satisfying any of the conditions. It is submitted that as per approved standing orders of the Respondent company, subsistence allowance is payable to an employee who is placed under suspension pending enquiry but not to an employee who is not placed under suspension. It is submitted that the Workman as a responsible employee and as a responsible family head, ought to have realised his responsibilities and discharged them dutifully, which could have averted the present situation. Therefore, prayed to dismiss the case of the Workman.

4. On the basis of the pleadings of both parties and arguments advanced, the following points emerge for determination:-

I. Whether the Departmental Enquiry held against the workman is legal and valid?

II. Whether the action of General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Area, Mandamarri, Adilabad Distt. in terminating the services of Sri Edla Rajesh, Ex.Badli Coal Filler, RK-1 Inc., Mandamarri with effect from 27.11.2009 is justified or not?

III. To what relief is the Workman entitled?

Findings:-

5. Point No.I:- The Departmental Enquiry conducted by the Respondent Management has been held legal and valid vide order dated 18.4.2017.

This point is answered accordingly.

6. **Point No.II:**- In the present matter, Workman was chargesheeted for committing misconduct under the Company's Standing Order number 25.25, for the habitual late attendance or habitual absence from duty without sufficient cause. As he has put in only 066 actual musters during the year 2008 an enquiry against the workman was conducted by Respondent Management following principles of natural justice. Respondent Management submitted that workman was given fair opportunity of hearing at every stage of the proceedings before enquiry which he has availed. The workman never raised any objection complaining about causing any prejudice before the enquiry.

Further, Respondent contended that workman has admitted that he received the chargesheet, and was aware of the charges levelled against him. He also admitted that he understood the charge levelled against him. Further, workman has accepted the charge levelled against him. During the enquiry, workman also stated that he do not want to take assistance of any Co-worker or trade union representative in the enquiry. Further, on the request of the Workman, Enquiry Officer has explained the procedure of inquiry in Telugu, which he understood and thereafter affixed his signature on the statement stating that he has read and understood the proceeding and participated in the enquiry initiated against him. Respondent submitted that workman in his explanation has admitted the chargesheet and he stated that he is admitting the charges mentioned there in.

7. However, during the enquiry proceeding Respondent management has examined two witnesses, i.e., Sri M. Srinivas, POA and Presenting Officer in support of charges and witness also deposed during enquiry that the Workman remained habitually absent for 260 days from duty and he has put in only 066 musters during the period from January, 2008 to December, 2008. Further, Management witness stated that Workman never got sanctioned leave before availing and never reported sick in any Company's hospital during the alleged absent period. Moreover the cross examination opportunity of witness was extended to the delinquent Workman, but he refused to cross examine the witness. The other witness, Sri B. Chandrasekhar Paysheet Clerk was examined as Management witness in support of charge sheet and witness has stated that he was working as a Paysheet clerk for the piece rated Paysheet of MK 4 incline,Mandamarri area and the Workman remained absent on the dates mentioned in the table given in his statement. He also stated that for a total number of 260 days Workman had remained absent from duty during the alleged period mentioned in charge sheet. This witness has also produced and proved the documentary evidence i.e., attendance Register pertains from January, 2008 to December, 2008 and H- register, i.e., leave register for the year 2008, through which he has verified and stated that total 260 days absenteeism has been recorded in the attendance register and paysheets. Further, cross examination opportunity was extended to the Workman from this witness but the Workman refused to avail it. The statement of the Workman was also recorded during the enquiry and in his statement Workman has admitted the fact that he remained absent on the dates mentioned in the chargesheet and it was his mistake to remain absent. Thus, Workman has accepted the charges and pleaded guilty of the charge. Further, workman stated that he remained absent in the dates mentioned in the charge sheet due to ill health of his mother and he did not obtain prior sanction of the leave or sick leave for the said period. Further, the Workman stated that he was not having any medical treatment slips or reports to produce in the enquiry proceedings to substantiate his claim. However. Workman has admitted in his statement that it was his mistake for remaining absent during the period stated in the chargesheet, i.e., from January 2008 to December 2008, for a total period of 260 days. Further, workman was also cross examined by the Presenting Officer for Respondent Management and in his cross examination workman has admitted that he has not reported sick in the company's hospital, nor he has got sanctioned any leave for the period of his absence. Further, workman stated that he accept the charge that he remained habitually absent from duty as mentioned in the chargesheet, and he is not having any medical slips are reports during the enquiry to substantiate his statement. Therefore, on the basis of the evidence recorded during the inquiry proceeding the Enquiry Officer has submitted his report holding the Workman guilty of the misconduct under Companies Standing Orders No.25.25 for habitual absenteeism from duty without sufficient cause on the basis of Enquiry Report, the Disciplinary Authority issued a copy of the enquiry report to the Workman, along with show cause notice. Thereafter, on going through the enquiry report and evidence on record and written representation of the Workman, Disciplinary Authority has passed the order of dismissal of workman from service.

8. From the perusal of the charges that has been held proved against workman in the domestic enquiry, one cannot possibly argue that charge was simple in nature. In other words, the charges were of serious in nature. The workman habitually remaining absent from duty without sufficient cause, due to such conduct of workman. Respondent Company's work has suffered a lot. Respondent counsel contended that if the unauthorised absence of the employees is allowed to continue it would lead to encouraging the indiscipline in the industry which in turn affect the discipline in the industry. Due to the said conduct of absence from duty of the Workman the work of the company was disrupted and company also suffered the loss of working days. Therefore, the Respondent prayed that the conduct of the Workman is grossly serious in nature and the punishment of dismissal from service was appropriate punishment in this case. Keeping in view the serious nature of the habitual misconduct committed by the Workman. the order of dismissal passed against him cannot be faulted with nor can be said to be in any way disproportionate to the gravity of the misconduct. In other words, punishment of dismissal was proportionate with the gravity of charge, hence deserves to be upheld.

9. Thus, in view of the provision contained in clause 25.25 of Company's Standing Orders, the Workman has committed gross misconduct and he has been rightly held guilty of the charges levelled against him.

In State of U.P. V. Ashok Kumar Singh 1996 (1) SCC 302, the Apex Court have held:-

"Having notices the fact that the first respondent has absented himself from duty without level on several occasions, we are unable to appreciate the High Court's observation that 'his absence from duty would not amount to such a grave charge. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when

the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out."

In **North Eastern Karnataka R.T. Corpn. v. Ashappa decided on 12 May, 2006 Apex Court have held:-**

"Remaining absent for a long time, in our opinion, cannot be said to be a minor misconduct. The Appellant runs a fleet of buses. It is a statutory organization. It has to provide public utility services. For running the buses, the service of the conductor is imperative. No employer running a fleet of buses can allow an employee to remain absent for a long time. The Respondent had been given opportunities to resume his duties. Despite such notices, he remained absent. He was found not only to have remained absent for a period of more than three years, his leave records were seen and it was found that he remained unauthorisedly absent on several occasions. In this view of the matter, it cannot be said that the misconduct committed by the Respondent herein has to be treated lightly.

In Delhi Transport Corporation v. Sardar Singh [(2004) 7 SCC 574], the Apex Court held:

"11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorised. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of para 4 of the Standing Orders shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorised."

Therefore, in view of the law laid down by the Hon'ble Apex Court, discussed as above, in the present matter, the conduct of workman remaining absent from duty without any plausible and reasonable cause for long duration has been considered a serious misconduct. However, in the present case Workman utterly failed to substantiate his plea of illness by any evidence for absenteeism from duty during the alleged period. Moreover, Workman has also failed to explain as to why he did not intimate about his illness to the Respondent Management to obtain the sanctioned leave or to report sick in the Respondent Company hospital. Thus, on the basis of facts and circumstances of the case I am of the considered view that Workman remained absent from duty for a long period during the year 2008 without sanctioned leave or intimation to Management and such conduct of the Workman is not condonable in any of the circumstances.

10. Further, Workman has pleaded that Disciplinary Authority did not consider his submission before issuing the impugned order of dismissal and he is sole bread winner of his family and as a result of his dismissal from service, his whole family rendered without any livelihood. Therefore, prayed for taking lenient view regarding punishment imposed.

11. On the other hand, Respondent has contended that the Respondent's Company employs more than 67,000 persons, which includes workmen, executives and supervisors. The production results will depend upon the over all attendance and performance of each and every individual. They are inter-linked and inseparable. In this regard, if any one remains absent, without prior leave or without any justified cause, the work to be performed gets effected. Such unauthorized absence creates sudden void, which at times is very difficult to fill up, and there will be no proper planning and already planned schedules get suddenly disturbed without prior notice. That is the reason why the Respondent's Company is compelled to take severe action against the unauthorized absentees. In the instant case, the Workman is one such unauthorized absentee and he had put in only 06 musters during the year 2008. He was dismissed after conducting a fair enquiry, giving full opportunity to the Workman to defend his case and providing him an opportunity of three months time to improve his attendance. The Workman failed to rectify his mistake. After issuance of charge sheet he had put in just 059 musters during the year 2009. As such, the Respondent's Company was constrained to dismiss the Workman for unauthorized habitual absenteeism with effect from 27.11.2009 vide dismissal order No.MMR/PER/D/072/ 09/5942, dated 17.11.2009.

As regards the power and jurisdiction of the Appellate Tribunal in case of interference in the order of Disciplinary Authority is concerned, *Industrial Courts or High Courts would not normally interfere with the quantum of punishment imposed upon by the Disciplinary Authority.* The relevant decisions of the Hon'ble Apex Court on this point is extracted below:-

a. **State of U.P. vs. Sheo Shanker Lal Srivastava and Others [(2006) 3 SCC 276], Hon'ble Apex Court have held**:-

"the Industrial Courts or the High Courts would not normally interfere with the quantum of punishment imposed upon by the Respondent stating: "It is now well-settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well-settled that the High Court shall be very slow in interfering with the quantum of punishment unless it is found to be shocking to one's conscience."

b. In **Management Coal India Ltd. v. Mukul Kumar Choudhary Civil Appeal 5762-5763 of 2009 decided on 24.08.2009, Hon'ble Apex Court laid down the test of proportionality of punishment and held**:-

"*One of the test to be applied while dealing with the question of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.*"

c. In the case of **Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jayabhay, the 2022 LLR page 126, wherein the Hon'ble Apex Court held:**

"once the enquiry finding is held to be fair and proper, industrial Tribunal or Labour Court lacks jurisdiction to interfere with the quantum of punishment unless the same is shockingly disproportionate to the gravity of conduct."

Therefore, in view of settled laws laid down by of Hon'ble Apex Court as discussed above, this Tribunal has very limited scope to interfere in the order of Disciplinary Authority. However, the workman has failed to establish that the order of dismissal passed by Disciplinary Authority is either perversed or has been passed without any evidence.

12. Since, the Workman in the matter on hand has been found habitual absentee from duty, and due to his said conduct, the work of the Respondent Company got obstructed and Company also suffered loss. Therefore, in such circumstances, the Respondent Disciplinary Authority was constrained to pass the order of dismissal of Workman from the service. Thus, Disciplinary Authority has passed the dismissal order dated 17.11.2009 after taking into consideration the evidence and finding of the Enquiry Officer as well as the representation of the workman and also took into consideration the past conduct of the charge sheeted employee. Therefore, I find no illegality or infirmity in the dismissal order of the Workman under challenge in this petition.

This Point No.II is answered against the Workman and in favour of the Respondent.

13. **Point No.III**:- In view of the fore gone discussion and finding at Point No.I & II, and law laid down by the Hon'ble Apex Court, the Workman is not entitled for any relief and his petition is liable to be dismissed.

Therefore, Point No.III is decided accordingly.

AWARD

In view of the fore gone discussion and finding arrived at Points No.I, II & III, I am of the considered view that the action of the General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Area, Mandamarri, Adilabad Distt. in terminating the services of the Workman Sri Edla Rajesh, Ex.Badli Coal Filler, RK-1 Inc., Mandamarri with effect from 27.11.2009 is held legal and justified. Hence, the Workman is not entitled to any relief as prayed for. As such, the petition filed by the Workman Union being devoid of merits stands dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 12th day of July, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1583.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम्स के लिए रोहित लोचव, एलडी.एआर, एम/एस.ए.एस.एसोसिएट्स के लिए अभिषेक शुक्ला, एलडी.एआर के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय**

सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय नं. II, नई दिल्ली के पंचाट (आई डी नम्बर 22/2019,23/2019 एवं 24/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/08/2024 को प्राप्त हुआ था।

[सं. एल.-20013/01/2024-आई.आर. (सी.एम-I)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th August, 2024

S.O. 1583.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID No. 22/2019,23/2019 and 24/2019*)* of the **Central Government Industrial Tribunal-cum-Labour Court N0.II, New Delhi** as shown in the Annexure, in the industrial dispute between the Management of **Rohit Lochav,ld.AR for AIIMS.Abhishek Shukla,Ld.AR For M/s.A.S.Associates.** and their workmen, received by the Central Government on ***12/08/2024.***

[No. L-20013/01/2024 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOV. INDUSTRIAL-TRIBUNAL CUM – LABOUR COURT NO II, NEW DELHI

ID No. 22/2019, 23/2019, 24/2019

Decided on: 07.06.2024.

Sh. Rajender Sharma, Sh. Ajay Kumar and Sh. Harbeer Singh

Vs.

Director (Chief) of NDDTC, AIIMS and Ors.

Counsels:

For Applicants/ Claimants*:*

Sh. Chandrashekhar Azad, Ld. AR For claimants.

For Managements/ Respondents*:*

Sh. Rohit Lochav, Ld. AR for AIIMS.

Sh. Abhishek Shukla, Ld. AR for M/s A.S. Associates.

AWARD

1. These are the three cases filed by different workmen against the same respondents. Having common cause of action and common respondents, these cases are taken together for deciding the issue of maintainability in view of section 2-A of the Industrial Dispute Act which sets out the limitation for filing of claims.

2. Before proceeding further, the brief fact in regard to these claim petitions are required to be produced. Workmen particulars, whose claims are being dealt are given below in tabular form:

	workman	Post	Salary	Date of appointment	Date of termination
	Sh. Rajendersharma	Electrician	5500/- p.m.	01.12.2003	01.06.2013
	Sh. Ajay Kumar	Electrician	3500/- p.m.	01.04.2009	01.06.2013
	Sh. HarbeerSingh	Electrician	5000/- p.m.	02.08.2007	01.06.2013

3. The case of workmen is that they were appointed through management-1 with their respective dates at the post of electrician. They had always performed their duty with utmost care and diligence. Management had not been providing them legal facilities like appointment letter, attendance, earned leave, casual leave, overtime bonus and pay-scale. When the workmen demanded the above said legal facilities, the management without any intimation,

started to pay their wages through contractor since 2010. When the workmen raised objection, their services had been terminated on 01.06.2013. Workmen have been rendered jobless since the date of their illegal termination. Workmen sent a demand notice regarding their illegal termination and orally requested the management for reinstatement through the conciliation officer and Assistant Labor Commissioner (Central), (Dehradun) but it yielded no result. Hence, they filed the present claim with the prayer that they be reinstated with continuity of service and full back wages along with consequential benefits and regularization of their services at the post of electrician with the

retrospective effect from their initial date of joining. Respondent-1 and respondent-2 had appeared and filed their respective written statements

where they denied the averment made by claimants in their claim petition. Management-1 stated that the workmen had left the services of their own. Management-2 denied to have had any employer-employee relationship between them and the workmen. Issues had been framed in the present cases on 17.09.2019. Following issues were framed:

1. Whether the proceeding is maintainable.
2. Where their exists any relationship as employer and employeebetween management-1 and management-2 and the claimants.
3. Whether the services of the workmen were terminated illegally by the managements.
4. To what relief the workmen are entitled to.

4. These matters were listed for filing of reply of application U/s 11

(3) (b). At that time, this tribunal found that these claim petitions were filed by the claimants in the year 2019, much beyond the period of limitation prescribed U/s 2-A (3). On 21.05.2024, these matters were fixed for consideration on maintainability of these petitions. On 30.05.2024, AR for the workmen sought adjournment stating that he was not well. He was given one week's time for giving clarification in regard to the fact whether these applications are maintainable in view of specific bar imposed by statute. Before we proceed further, it is necessary to produce the text of section 2-A:

"2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- [(1)] where any employer discharges, dismisses,

retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute not withstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Not withstanding anything contained in section 10, any such workman as is specified in sub- section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this act and all the provisions of this act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section(1).

5. A perusal of the aforesaid section would go to show that a dispute connected with or arising out of discharge, dismissal, retrenchment or otherwise termination of services of the workman can be directly agitated by workman U/s 2-A of the act and it is not necessary that such disputes should be sponsored by the trade union or a substantial number of workmen. However, what is required is that workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of section 2-A can make an application directly to Labour Court or Tribunal for adjudication of his individual dispute after expiry of 45 days from the date he has made an application to conciliation officer of appropriate government for conciliation of dispute. Sub-section 3 of section 2-A lay down the time limit for making such application to Labour Court or the tribunal. It provides that such application to Labour Court or tribunal shall be made before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section-1. This right is available to the workman without any effect upon remedy available in section 10 of the act.

6. Ld. AR of workmen has relied upon the judgments **Ajayab Singh** Vs **Sirhind Cooperation** and **Raghubir Singh** Vs **General Manager, Haryana Roadways, Hissar** passed on 08.04.1999 and 03.09.2014 respectively by Hon'ble Supreme Court of India and submitted that limitation act is not applicable in the Industrial Dispute Act. He submitted that in both of the said judgments, it was held as such.

7. On the other hand, Ld. AR for management relied upon the judgments **Balwan Singh and Ors.** Vs. **Sahara India Parivar and Ors., W.P. (C) 4357/2013** and **Sh. Lal Chand** Vs. **Himachal Pradesh State Electricity Board Limited and Ors., CWP No. 3058/2023** and stated that the case is barred by limitation as setout in clause 3 of section 2-A of act.

8. Judgments relied by AR of claimant are not relevant in the present case. The Apex Court in both the judgments passed in 1999 and 2014 had held that the limitation act is not applicable to the references made under Industrial Dispute act, 1947 and those judgments had been delivered in respect of section 10 (1)

(C) of the act. Section 10 (1) of the act enables the appropriate government to make reference of an industrial dispute which exists or is apprehended at any time to one of the authorities mentioned in the section. How and in what manner or through what machinery, the government is apprised of the dispute is hardly relevant. The only requirement of taking action U/s 10 (1) is that there must be some material before the government which will enable the appropriate government to form an opinion that an industrial dispute exists or is apprehended. These cases in hand are not referred by the appropriate government by making the reference to this tribunal. These cases relied by AR of the claimants is not in reference to section 2-A of the act where the limitation is set out for approaching Labour Court or tribunal directly after expiry of 45 days of approaching the conciliation officer in respect of their termination, retrenchment, dischargeor dismissal of the services.

9. Next contention of AR for claimants is that plea of limitation has not been raised by the management, that is also not relevant. The tribunal is bound to follow the dictate of the law enacted by the legislature.

10. Reading of section 2-A (3) would lead to an irresistible conclusion that time stipulated for invoking jurisdiction of Labour Court or the tribunal as the case maybe, has to be necessarily before expiry of three years from date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1). It is mandatory, not directory.

11. Now, in cases in hand, admittedly, the services of workmen were terminated on 01.06.2013. Failure of conciliation certificate was issued by the Assistant Labour commissioner (Central), Dehradun on 20.11.2018 and the claims had been filed after three months of receiving the failure certificate i.e. on 01.02.2019 after 05years and 08 months of their termination.

12. In view of the above discussion, all these three petitions are not maintainable in view of specific bar of section 2-A (3) of Industrial Dispute Act. Hence, these claim petitions stand dismissed. Award is accordingly passed. A copy of this award is placed in each of the file. Copy of this award is sent to the appropriate government for notification as required U/s 17 of the I.D Act. These files are consigned to record room.

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1584.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्रीय चिकित्सालय, बड़कुही, वेकोली के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**11/2019**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **07/08/2024** को प्राप्त हुआ था।

[सं. .एल.-22012/158/2018-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th August, 2024

S.O. 1584.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/11/2019*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the

Management of **Central Hospital,Badkuhi,Vekoli** and their workmen, received by the Central Government on **07*/08/2024.***

[No. L-22012/158/2018 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/11/2019

Present: P.K.Srivastava

H.J.S..(Retd)

Santosh Bathav

Badkuhi, Tehsil – Parasiya

District – Chhindwara– 480001 (M.P.)

Workman

Versus

Chief Medical Officer

Central Hospital, Badkuhi, Vekoli

Pench Area, Parasiya,

Distt.- Chhindwara – 480001 (M.P.)

Management

JUDGEMENT

(Passed on this 21st day of June-2024)

As per letter dated 31/12/2018 by the Government of India, Ministry of Labour, New Delhi as made this reference to the Tribunal under section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per reference number L-22012/158/2018/IR(CM-2) dt. 31/12/2018. The dispute under reference related to :-

''1. क्या, महाप्रबंधक (का. व औ. सं.), वेकोलि मुख्यालय नागपुर द्वारा अनाधिकृत रूप से अपने कार्य से अनुपस्थित कामगारों को नियंत्रित करने के उद्देश्य से जारी किया गया परिपत्र दिनांक 27/8/02 (प्रति संलग्न) वेकोलि में प्रचलित स्थाई आज्ञाओं के अनुसार मान्य है ?'' यदि नही तो क्या उक्त परिपत्र रद्द किए जाने योग्य है ?''

''2. क्या, प्रमुख चिकित्सा अधिकारी, केंद्रीय चिकित्सालय, बड़कुही, वेकोलि, पेंच परासिया, जिला छिंदवाड़ा द्वारा श्री संतोष बाथव को दिनांक 19/2/18 से कार्य पर जाने की अनुमति वेकोलि के परिपत्र दिनांक 27/8/02 के अनुसार ना देना उचित है ? यदि नहीं तो उक्त कामगार क्या अनुतोष पाने के अधिकारी है ?''

After receiving the reference, notices were sent to the parties. They appeared and filed their respective statements of claim and defence.

The case of applicant Workman, as taken by him in his statement of claim, is mainly that he was issued a chargesheet by management on March 10th, 2017 with an allegation that he absented himself on authorisedly and wilfully within the period from February 23rd, 2017. to March 10th, 2017, which is misconduct in para 26.30 of the Certified Standing Orders. He submitted his reply dated March 15th 2017 by way of registered a post stating that he had got sanctioned earned leave for five days from February 23rd 2017 to February 28th 2017 and thereafter, he became sick, was under treatment of Doctor in the Government Hospital Betul from March 1st 2017 to May 22nd 2017. He further stated that he had sent an information to management, in this respect also. In the meantime, he remained in judicial custody in relation to a criminal case registered against him for the period August 29th 2017 to January 31st 2018. It is further, the case of the workman that the chargesheet dated March 10th 2017, which was issued against him earlier by management and was kept in abeyance was again picked up by management and a departmental enquiry was ordered against him vide order Dated April 11th 2018 on the basis of that chargesheet. According to the workman, when he appeared for resuming his job after his release from custody on bail and requested the management to allow him to resume his duties on February 19th 2018, he was not allowed to resume his job and his prayer was kept pending till July 20th, 2018 and issue was permitted to resume is duties only on July 20th 2018. Thus, this action of management in not permitting the workman to resume his duties on February 19th 2018, when he appeared before management and requested for it and keeping his this prayer pending till July, 20th 2018, is in violation of paragraph 28.9 of the Certified Standing Orders and is arbitrary. The Workman has thus prayed that, he

be held entitled to wages for the period from February 19th 2018 to July 20th 2018 and also be held entitled to subsistence allowance for the period spent by him in judicial custody in relation to the criminal case, deeming him to be suspended during that period, and also be held entitled to earned leave and medical leave as per rules for the period February 23rd 2017 to May 2nd 2017 and other consequential benefits.

The case of management, as taken by them in their written statement of defence, is mainly that the Workman has been habitual absentee. He has been in the habit of remaining absent from duty without permission intimation and sanction of leave. He was issued a chargesheet on March 10th 2017 for absence without any information or getting leave sanctioned from February 23rd 2017 to March 10th 2017. In the meanwhile, management, received a communication from Police Department that the Workman was required for interrogation in relation to some police case and he was advised by management to appear before the police in this respect by a letter of management. The Workman sent his reply on March 14th 2017, is stating that he had applied leave from February 23rd 2017 and he could not report on duty due to sickness because he was under treatment from District Hospital and also that the police had wrongly implicated him in the case for which he was seeking legal remedies. The case of management is that this ground of sickness and treatment in government Hospital taken by the Workman in his reply dated March 14th 2017 was false and fabricated because he did not file any medical subscription, no receipt regarding payment in purchase of medicines etc. His medical certificate regarding his treatment in District Hospital is also fabricated. He was in judicial custody from August 29th 2017 to February 19th 2018. He was duty bound to inform the management regarding his arrest by police and judicial custody, but he did not do so and made a representation only on February 19th after he came on being released on bail. The enquiry proceedings were initiated against him on the basis of charge sheet in which he admitted is fault but on the request of union and his assurance that he will improve himself, the management decided not to take any action against him. According to management, there is nothing illegal regarding action taken against the Workman. Accordingly, management has requested that the reference be answered against the Workman.

In evidence, the workman has filed and proved photocopy of charge sheet dated March 10th 2017, letter of management to the workman dated March, 1st 2017 informing him about the police case and requiring him to contact the police enquiry proceedings, circular of management, dated August 27th 2002, letter of general manager dated August 27th 2002, circular of management, dated July 11th 2018. With respect to timeline for duty allowance proposal, letter of management, dated July 9th /10th 2018, sent to the workman leveling against him charges of absence without any sufficient cause and without getting any leave sanctioned for the period February 23rd 2017 to February 19th 2018, letter of management, dated July 20th 2018 permitting the workman to resume his duties. The Workman has further filed his affidavit as his examination in Chief. He has been cross-examined by management.

Management has filed the affidavit of its witness as his examination in Chief. He has been cross-examined by Workman. Management has not filed or proved any documentary evidence.

I have heard argument of learned counsel for management. Mr. Neeraj Kewat. None was present for the workman at the time of argument, but written arguments has been filed from his side, which is part of record. I have gone through the written arguments and the record as well.

After having gone through the record in the light of rival arguments, following issue comes up for determination in this case-

"1. Whether the action of management in not permitting him to join his duties from February 19th 2018 ie; the date on which he submitted himself for resuming his duties and requested the management for it and allowing him to resume his duties only from July 20th 2018 as well not paying him his wages for this period also not paying subsistence allowance to the workman for the period he remained in custody as well not sanctioning him leave for the period under medical treatment is just and legal ?

2. Whether the workman is entitled to any relief ?."

Issue number one-

From the evidence on record, the fact that departmental enquiry was conducted against the Workman on the basis of charge sheet issued against him on March 10th 2017, which contained charge of wilful absence without any sufficient cause within the period February 23rd 2017 to March 10th 2017, also that no departmental enquiry was conducted on the basis of charge sheet issued by management against the Workman on July 9th /10th 2018, sent to the workman leveling against him charges of absence without any sufficient cause and without getting any leave sanctioned for the period February 23rd 2017 to February 19th 2018 , is not disputed. The fact that in the departmental enquiry conducted against the Workman on the basis of charge sheet above referred, the workman admitted, the charges, though he mentioned reasons behind his absence and assured the management that he will not repeat in future. There is nothing on record produced by management, nor pleaded by management that any punishment was awarded to the workman rather management has come with a case that in place of punishment, the Workman was given a chance to improve himself.

On the cost of repetition, it is further stated that no departmental enquiry was conducted against the Workman on the basis of the chargesheet Dated July 9th /10th 2018, sent to the workman leveling against him charges of absence without any sufficient cause and without getting any leave sanctioned for the period February 23rd 2017 to February 19th 2018. Hence this chargesheet will be deemed to be in operational.

In the circular of August 27th 2002, it has been mentioned that when the absence is beyond three months continuously, the Workman shall not be allowed duty by the area. In such case, disciplinary action should be initiated for such misconduct. However, if there be any genuine case having proper justification for such absence and Chief General Manager/General Manager is satisfied, such cases should be forwarded to General Manager (P&IR) WCL HQ along with complete details and a recommendation for necessary consideration and approval of Director (Personnel). The letter of management, dated July 20th, 2018 shows that the Workman was permitted to join after approval of the Director on his application to resume his duties filed by him on February 19th 2018. **The question here arises as to whether the Workman is entitled to be deemed to be on duty from February 19th 2018, when he appeared for resuming his job and requested the management for this**. Keeping in mind the fact that **firstly**, he was awarded no punishment for any of misconducts leveled against him in the two chargesheets as mentioned above, even when enquiry was conducted with respect to only one chargesheet, **secondly**, the time consumed by management in getting approval for joining the workman on job could not be attributed on the part of the workman, and **thirdly**, management could not cite any provision mentioning that within the period consumed between filing of application regarding permission to join his job by the Workman and approval of management, the workman will not be paid any wages, the it equity and Justice both require that the Workman be not denied his wages for this period, **and holding the action of management denying the wages to the workman for the period between February 19th 2018 to July 20th 2018 unjustified in law, the management is held liable to pay the wages and all other service benefits to the workman , deeming him to be in service for this period**.

As regards the claim of the Workman regarding subsistence allowance to him for the period, in judicial custody, references of paragraph **28.9 of the Certified Standing Orders** is required, which is being reproduced as follows-

Notwithstanding the provisions contained in the standing orders, as above, the management reserves the right to suspend or Workman being prosecuted in a court of law for any grave criminal offence involving moral turpitude or murder until disposal of the trial. In such cases, the Workman concerned shall be entitled to 50% of wages as subsistence allowance. In case the above workman is finally acquitted he would be paid in full wages for the period of suspension.

During the period in which the Workman was in judicial custody with the relation to some criminal case as detailed above, it is to be kept in mind that there is no formal suspension order passed by the management in this respect. Since the Workman was in custody and does couldn't not be available for his duties, in absence of any provision otherwise referred to from the side of management, he shall be deemed to suspended. **Thus, he shall be entitled for subsistence allowance as provided in paragraph 28.9 referred to above, and the action of management in not paying him subsistence allowance for the period is held arbitrary and against law**.

As the claim of the workman regarding his wages for period regarding he produced medical papers with respect to his illness and treatment in Government Hospital, since there is no finding in enquiry or evidence otherwise that this certificate was not genuine, **the management is held under legal obligation to consider this certificate and grant the workman medical leave as well salary and other in service benefits for this period ie; from February 23rd 2017 to May 22nd 2017.**

Issue number one is answered accordingly.

Issue number two –

In the light of findings recorded in issue number one, the workman is held entitled to relief as detailed in issue number one.

On the basis of the above discussion, the reference is answered as follows-

AWARD

Holding the action of management in not permitting the workman to join his duties from February 19th 2018 ie; the date on which he submitted himself for resuming his duties and requested the management for it and allowing him to resume his duties only from July 20th 2018 as well not paying him his wages for this period also not paying subsistence allowance to the workman for the period he remained in custody as well not sanctioning him leave for the period under medical treatment illegal, the Workman is held entitled to the wages and all other service benefits, deeming him to be in service for this period between Feb,12th 2018 to July 20th 2018. He is further held entitled for subsistence allowance as provided in paragraph 28.9 of Certified Standing Orders for period he was in custody. He is also held entitled to consideration of grant of medical leave as well salary and other in service benefits for this period under which he produced medical certificates regarding his treatment, ie; from February 23rd 2017 to May 22nd 2017 under relevant Rules.

No order as to costs.

Reference stands answered accordingly.

DATE: 21/06/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1585.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**42/2015**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **07/08/2024** को प्राप्त हुआ था।

[सं. .एल.-22012/13/2015-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th August, 2024

S.O. 1585.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/42/2015*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **W.C.L.**and their workmen, received by the Central Government on **07*/08/2024.***

[No. L-22012/13/2015 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/42/2015

Present: P.K.Srivastava

H.J.S..(Retd)

Sh. Suraj Pal S/o. Sh. Barelal Balmiki

Near Nagar Nigam Engineers House,

Near TB Memorial Hospital

Madhanta Colony, Chhindwara (M.P.)

Workman

Versus

The Manager

Western Coalfields Limited

Tansi Project, Kanhan Area, PO: Rampur Bhoya

Tehsil Junardev, Distt.-Chhindwara - 480555

Management

JUDGEMENT

(Passed on this 11th day of July-2024)

As per letter dated 11/05/2015 by the Government of India, Ministry of Labour, New Delhi as made this reference to the Tribunal under section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per reference number L-22012/13/2015/IR(CM-II) dt. 11/05/2015. The dispute under reference related to :-

''क्या प्रबंधक, तानसी कन्हान क्षेत्र वेस्टर्न कोलफील्ड्स लिमिटेड, कान्हान क्षेत्र, डुंगरिया, जिला छिंदवाड़ा, द्वारा आवेदक श्री सूरजपाल पिता श्री बारेलाल, पूर्व लिपिक, तानसी, कन्हान क्षेत्र, वेस्टर्न कोलफील्ड्स लिमिटेड कान्हान क्षेत्र, डुंगरिया जिला छिंदवाड़ा को उनकी जन्म तिथि 01.05.1955 के स्थान पर 01.07.1946 मानते हुए दिनांक 30.06.2006 को सेवानिवृत्त किया जाना उचित है ? यदि नहीं तो आवेदक क्या अनुतोष पाने का अधिकारी है ?''

Case of the Workman is mainly that he was first appointed on April 1, 1975 by the management, his date of birth was wrongly recorded as July 1, 1946 in his service records maintained by management. He made his representation through the Union and personally also had requested the management to record his date of birth May 1, 1955 in his service records. Management did not take any action and superannuated him on June 30th , 2006 on the basis of his date of birth July 1st , 1946, which is arbitrary and is against law. It is further, his case that he made several attempts right since 1992 to get his date of birth corrected, but no attention was paid by management. He raised a dispute before the concerned Labour Commissioner. Hence this reference. The Workman has thus prayed that, holding his date of birth July 1st , 1955 as correct, he be held entitled to continue in service with all pre-and post-superannuational benefits till June 30th , 2015 and the action of management in superannuating him on June 30th, 2006 be held against law.

The management has taken the case that the Workman was initially appointed as a General Mazdoor with effect from April 1st, 1974. Thereafter, he was regularised in services. He was promoted in Clerical Cadre and at the time of his superannuation, he was working as a Clerk grade II. He had declared his age as 29 years at the time of his first appointment. It is further, the case of management that under rules, a Register of employment, popularly known as Form-B register is maintained, which contains the name and parental of the Workman, his permanent address, date of his birth, identification marks and other information. His date of birth July 1st, 1946, was recorded in this Register on the basis of information provided by him, and he authenticated this information by way of putting his signature on this form. The Workman did not raise any objection regarding his date of birth, never produced any documents regarding date of his birth, neither at the time of his initial appointment nor letter on, though he had several occasions to do so during his service. Form PS-3, and Form PS-4, which are prepared by management for the purpose of Pensionary benefits and are signed by the Workman authenticating the details mentioned in these forms. According to management, his same date of birth July 1st, 1946, has been mentioned in these documents. The management has further requested that the reference be answered against the Workman.

The Workman has filed in evidence and has proved his identity card, excerpts from his service records, issued by management in 1987, mentioning his date of birth May 1st, 1955, containing signature of official of management and the Workman, his application dated July 14th, 1992 sent by him to the Mines Superintendent/Manager in which he has raised a dispute regarding discrepancy in his date of birth and has requested the management to correct his date of birth and other application, sent by the union to the management on April 9th, 2002 requested correction of his date of birth, notice of superannuation of the Workman, issued by management on February 27th 2006, copy of his primary school Mark sheet, copy of certificate of middle school issued in 1971. Containing his date of birth May 1st 1955, Mark sheet of middle school, his other schools certificates, which had been marked Ex. W/ 1 to Ex. W/15, respectively. The Workman has further filed his affidavit as his examination in Chief and he has been cross-examined by management.

The management has filed in evidence an affidavit of its witness in his examination in Chief. This witness has proved entry in the Form -B Register maintained by management, Form PS-3 and Form PS-4, which are Ex. M/1 to Ex. M/3.

I have heard argument of Mr. Subodh Agrawal learned Counsel for Workman and Mr. Neeraj Kewat, learned Counsel for management. I have gone through the record as well.

After going through the record in the light of rival arguments, following issues come up for determination in the case in hand.-

1. **Whether the action of management in not correcting the date of birth of the Workman in his service records is justified?**
2. **Whether the action of management in superannuated the Workman on the basis of his date of birth recorded by management in his service records is correct** ?
3. **Whether the Workman is entitled to any relief ?.**

Issue Number One:-

The respective pleadings of both the parties on this issue have been detailed earlier. Both side witnesses have supported their pleadings in their affidavits as their examination in Chief. Form-B, which is the first document admittedly maintained by management regarding the Workman at the time of his entry in service, mentioned his date of birth as July 1st, 1946. Form PS-3 and Form PS-4, maintained by management on the basis of the Form-B of the Workman contained July 1st, 1946 as his date of birth. According to the Workman, the date of birth was wrongly recorded by management. It is the case of the workmen that he had produced his educational qualifications certificates containing his date of birth before the management at the time of his entry service, but was ignored by management, whereas the management side denied this allegation. It is further, the case of Workman that in the year 1987, management issued service, excerpts of all the Workmen and the workmen were asked by management to verify than days and file objection if they have any against any of the entries in this service, excerpts. The Workman further states

that he was issued a copy of service excerpts, which he has filed and proved, which contains his date of birth May 1st, 1955. Management, though pleads that this document filed and proved by the Workman is not genuine, but does not specifically deny that such excerpts were issued to the workmen in the year 1987 and also does not deny the allegation that the Workman was issued any service excerpts in 1987 as claimed by him, proved by him. The statement of management witness also does not deny or rebut this allegation or statement of the Workman on this point. The management, though files and proved copies Form-B, Form PS-3 and Form PS-4, but does not file, the correct copy of service excerpts of the Workman, which the management had issued in the year 1987 to the workmen, including the applicant Workman.

It is further, the allegation of the workmen that he filed an application before management long back in the year 1992 , seeking correction of his date of birth in his service records. There is a standard operating procedure mentioned in the Implementation Instructions 76 (In short II76)with regard to disputes regarding age and date of birth of the Workmen. The two sets of documents which have been issued and maintained by management, ie; the Form -B, PS -3, PS-4 on the one hand and the service excerpts of the Workman, issued by management. In 1987 on the other hand, mentioned two different dates of birth. Naturally, there is a controversy regarding date of birth of the Workman. Furthermore, it is proved from the evidence of the Workman and copy of the application, which the workmen filed in the year 1992 to get his date of birth rectified, this fact also establishes that the Workman did raise a dispute regarding date of his birth. Then also, it was incumbent on the part of management to adopt the procedure as mentioned above in II 76 to get this controversy resolved. Since, the management did not take any step to get this controversy resolved, **the action of management in not correcting the date of the Workman or at least in not resolving the dispute regarding the date of birth of the Workman is held improper and unjustified in law. Issue number one is answered accordingly.**

Issue Number Two-

In the light of findings recorded while deciding issue number one, the action of management, superannuating the Workman on the basis of disputed entry of his date of birth recorded by management, without resolving the dispute by adopting the procedure mentioned in II76 is held unjustified in law. Issue number two is answered accordingly.

Issue Number Three:-

On the basis of findings on issue number one and two, the Workman is held entitled to all the in service and post retirement benefits, including back wages till the date of his superannuation on the basis of his date of birth May 1st, 1955. Issue number three is answered accordingly.

On the basis of above discussion, the reference is answered as follows.

AWARD

Holding the action of management in superannuating the Workman Suraj Pal on the basis of his date of birth July 1, 1946 against law, the Workman is held entitled to all the in service benefits, including back wages, and post retirral benefits admissible to him on the basis of his date of birth May 1st, 1955 till the date of his superannuation treating his date of birth May 1st, 1955. He is further held entitled to receive this amount within 30 days from the date of publication of this award, failing which interest at the rate of 6% per annum from the date of award date of payment. No order as to cost

DATE: 11/07/2024

P K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1586.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/07/**2015**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **07/08/2024** को प्राप्त हुआ था।

[सं. .एल.-22013/01/2024-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th August, 2024

S.O. 1586—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-RC/07/2015*)*** of the **Central Government Industrial**

Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.**and their workmen, received by the Central Government on **07*/08/2024.***

[No. L-22013/01/2024 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/07/2015

Present: P.K.Srivastava

H.J.S..(Retd)

Purushottam Lal Dwivedi

S/o. Shri Ramgopal Dwivedi

Retd. Belt Operator, Bijuri Colliery,

PO Bijuri Colliery, Distt. Anuppur (M.P.)

Workman

Versus

1. **South Eastern Coalfields Limited**
   Through its Chairman-cum Managing Director
   Seepat Road, Bilaspur (C.G.)
2. **Chief General Manager**
   Hasdeo Area, South Eastern Coalfields Ltd.
   District Korea (C.G.)
3. **Assistant Manager (Personnel)**
   Bijuri Sub Area, South Eastern Coalfields
   Ltd., Post Office Bijuri Colliery,
   Distt.-Anuppur M.P.

Management

(JUDGEMENT)

(Passed on this 2nd day of July-2024)

The workman has filed this petition U/S. 2-A (2 & 3) of the Industrial Disputes Act, hereinafter, referred to by the word 'Act' seeking the relief of his reinstatement with all back wages and benefits setting aside his retirement by management treating his date of birth 26.11.1952.

According to the workman, he was first appointed as a Labour on 26.11.1978 and was posted in the Bijuri Colliery. He was of 20 years of age according to his school examination certificate, which he had produced before the management. His date of birth 21.07.1958 as per his school certificate was accepted by management, which is evident from his pay slip issued by management. Later on, the management changed his date of birth in his service record by way manipulation to 26.11.1952. He made a representation before the management but no action was taken hence he preferred a Writ Petition No.-10261/2013, which was decided by Jabalpur Bench of Hon'ble High Court of M.P. vide order dated 27.11.2013 and the petition was dismissed. In the Writ Appeal No.-1460/2013 filed by the applicant workman against the said order, the management was directed to constitute a Age Determination Committee, the applicant was directed to appear before the Age Determination Committee, who was required to examine the applicant and send report to management. It was further directed that if the Age Determination Committee submits reports in favour of the applicant, the management shall abide it. According to the workman he appealed before the Age Determination Committee and submitted his documents. The Age Determination Committee, in his report dated 31.07.1987 had filed report with a finding that applicant had attained the age of superannuation on the date he was superannuated by management treating his date of birth 26.11.1952. He again approached Hon'ble High Court against this report, but his petition was dismissed on the ground of alternate remedy in Industrial Disputes Act. According to the applicant workman, the report of Age Determination Committee is against facts an action of management in

accepting the report and superannuating the applicant on the basis of report is bad in law, arbitrary, without application of mind and unfair labour practice. The applicant has prayed that setting aside his superannuation, he be reinstated and be paid back wages till date of his retirement on the basis of his date of birth 21.07.1958.

The case of management, has taken in its written statement of claim is mainly that this petition is not maintainable, as per official records maintained by management, the date of birth of the applicant workman is required as 26.11.1952 and he has been superannuated after attaining 60 years of age on the basis of this date of birth. It is further the case of management that the date of birth of the workman was first record in as 26.11.1952 in the Form-B Register, prepared by management on the basis of information furnished by the workman. A correction has been made in this document indicating his new date of birth 21.07.1958 as per ADC report which is neither counter signed, nor authenticating nor verified by any authority, hence are result of manipulation by someone. Also pleaded by management that in compliance of order of Hon'ble High Court, the workman side his school certificate in support of his claim regarding his date of birth which was found not genuine and the Age Determination Committee submitted its report on the basis of its inquiry in the light of I.I.76 which was accepted by management.

Following issues were framed by my learned Predecessor, on the basis of pleadings, vide his order dated 02.06.2016 :-

1. **Whether, the claim of the workman relating to date of his birth is tenable under Section 2-A of the Act ?**
2. **Whether, the termination/retirement of workman from 30.11.2012 is illegal ?**
3. **Whether, the workman is entitled to reinstatement with back wages ?**

In evidence, the workman filed his affidavit as his examination in chief, he was cross examined by management. The workman filed and proved documents Ex. W/1 letter of management dated 04.04.2014 sent to workman, Ex. W/2 order of Hon'ble High Court in W.P. No.-1196/2015, Ex. W/3 school certificate, Ex. W/4 Marksheet, Ex. W/5. Pay slip, Ex. W/6 Form-PS3 and Ex. W/8 Form-PS4.

The management filed affidavit of its witness as his examination in chief. This witness was cross examined by workman side. Management filed and proved Ex. M/1 & Ex. M/2, photocopy of order of High Court, Ex. M/3 report of Age Determination Committee alongwith proceedings, inquiry report with respect to over writing in Form-B of the workman, Form-B and various other documents, to be referred to as and when required.

I have heard argument of learned Counsel Shri Shailesh Mishra for workman and learned Counsel for management and have gone through the record.

Issue No.-1 :-

Section 2-A of the Act requires to be reproduced and is being reproduced as follows :-

2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.

(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

A perusal of this provision makes it clear that any termination of services of a workman or any dispute between the workman and management arising out of such termination will be an Industrial Dispute. A dispute regarding date of superannuation is no doubt covered in this provision because superannuation is also termination of service of a workman, hence the objection and argument from the side of management that superannuation or dispute regarding date of superannuation of a workman is not covered under Industrial Disputes has no leg to stand. Accordingly, the present dispute is held cognizable by this Tribunal and issue no.-1 is answered accordingly.

Issue No.-2 :-

I have gone through the proceedings and report of the Age Determination Committee. There is evidence on record that date of birth of another workman Dwarika was corrected by management on the report of Age Determination Committee but it was probably recorded in the Form-B of the present workman. This was a mistake on the part of officials of management. Perusal of the record makes it clear that the workman filed duplicate copy of Sambhagiya Purv Madhyamik Pariksha 1972, Sr. No.-1862 in which his date of birth 21.07.1958 was recorded. Another document Mark Sheet of Higher Secondary School Certificate Exam-1985, Sr. No.-466228 issued by Board of Secondary Education filed by the workman showed his date of birth 21.07.1958, whereas the workman was appointed on 26.11.1978, hence, the Age Determination Committee rightly refused to consider this certificate. Regarding the Purva Madhyamik Certificate, the Committee observed that this certificate was not submitted at the time of initial appointment probably because the required qualification was illiterate. According to the Committee in the records maintained by management with respect to the workman, his date of birth was recorded 26 years at the time of his appointment which corresponds to his date of birth 26.11.1952 which is supported by Radiological evidence also. It was also observed that service excerpts of workman was served on him in 1987 and objections were invited if any entry in the service excerpts was incorrect according to the workman. The workman did not raise any objection. The correction in the date of birth column was without authority. Hence, in the light of these facts, the finding of the Committee that the Purv Madhyamik Certificate was not of much credence with respect to the date of birth of the workman cannot be held to have been recorded against law or facts. The workman was required to produce cogent evidence by way of producing documents in form of entry in the admission registers and T.C. to support and corroborate his claim which he did not do before the Committee. Hence, the retirement of the workman on 30.11.2012 on the basis of date of birth recorded in the service register and Form-B is held correct and this issue is answered accordingly.

Issue No.-3 :-

On the basis of above discussion, the workman is held entitled to no relief.

Accordingly, the petition is held liable to be dismissed and is dismissed accordingly. No order as to cost.

DATE:- 02/07/2024

P K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1587.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**1/2014**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **13/08/2024** को प्राप्त हुआ था।

[सं. .एल.-22012/88/2013-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th August, 2024

S.O. 1587.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/1/2014*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **W.C.L.**and their workmen, received by the Central Government on **13*/08/2024.***

[No. L-22012/88/2013 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/1/2014

Present: P.K.Srivastava

H.J.S..(Retd)

General Secretary

Joint Coal Mazdoor Sangh (INTUC)

Iklahra, Distt.- Chhindwara (MP)

Workman

Versus

Manager

Western Coal Limited, Newton

Ganpati Khan, Pench Region,

Parasia, Distt.-Chhindwara (MP)

Management

(JUDGEMENT)

(Passed on this 25th day of July-2024)

As per letter dated 09/12/2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947 as per Notification No. L-22012/88/2013/IR(CM-II) dt. 09/12/2013. The dispute under reference relates to:

भक्या कर्मकार श्री सावंतराम को प्रबंधक, वेस्टर्न कोलफील्ड्स लिमिटेड, न्यूटन गनपति खान, पेंच क्षेत्र परासिया, जिला छिंदवाड़ा द्वारा एकतरफा जांच कार्यवाही कर नौकरी से बर्खास्त किया जाना न्यायोचित है ? यदि नहीं, तो कर्मकार क्या अनुतोष पाने का अधिकारी है ? "

After registering a case on the basis of the reference, notices were sent to the parties and were served. Parties appeared and file their respective Statement of Claims and Defense.

According to the workman, he was served a charge sheet on 21.07.1998 while working as Tub Loader, and was required to show cause on the charge mentioned in the charge sheet, which was allegation of following misconducts under the Certified Standing Orders :-

Clause-26.30 :- Absenting from duty without getting any leave sanctioned or without sufficient reason for a period more than 10 days.

The substance of the charge was he absented himself from duty without any sufficient reason and without informing management and getting leave sanctioned within the period from 30.04.1998 to 21.07.1998. According to the workman, the enquiry was not conducted according to rules and procedure thus prejudicing his defence. The Enquiry Officer recorded his finding against evidence on record. The Disciplinary Authority wrongly accepted the enquiry report and passed disproportionate punishment.

He prayed that setting aside his dismissal, he be reinstated with all back wages and benefits.

Rebutting the allegations of the workman, management has taken a case in their written statement of defense that the workman has been in the habit of wilfully absenting himself from duty without informing management and getting leave sanctioned. His attendance was total 102 days within the period January 1997 to April 1998 and 48 days within the period from 30.04.1998 to 22.07.1998. He was issued a charge-sheet in this respect on 21.07.1998, he submitted his reply on 26.07.1998. An enquiry was ordered against him and he was permitted to join his duties w.e.f. 1998. He was served a notice of the enquiry but he opted not to proceed in the enquiry and enquiry was conducted in his absence. The enquiry report was submitted by the Enquiry Officer holding the charge of misconduct proved. The Disciplinary Authority issued a show cause notice and the workman was terminated by the order dated 10.02.1999. According to the management, the charges were rightly held proved and the punishment is also not disproportionate to the charges.

Following issues were framed by my learned Predecessor vide his order dated 18.02.2016 :-

1. Whether enquiry conducted against workman is just proper and legal ?
2. Whether the punishment of dismissal of workman is proved from evidence in departmental enquiry ?
3. If not, to what relief the workman is entitled ?

Issue No.-1 as taken as preliminary issue.

The workman filed in evidence four photocopy documents related to the enquiry which are admitted by management and marked Exhibits W/1 to W/10. The management filed three photocopy documents which are charged reply of the workman on charge-sheet order instituting enquiry, copy of peon book entry, enquiry proceedings, enquiry report, dismissal order.

The workman died during the proceedings. He was substituted by his legal representatives. His wife filed her affidavit in examination in chief, she was cross examined by management. Management witness also filed his affidavit. He was cross examined by workman side.

Issue number one was decided on the basis of evidence above mentioned vide order dated 10.08.2022. Holding the departmental enquiry legal and proper. Parties were directed to lead evidence on other issues. No evidence was offered by any of the parties.

I have heard argument of union representative and learned Counsel for management Shri Neeraj Kewat. I have gone through the record as well.

Issue Number Two :-

It comes out from the perusal of enquiry papers that the management representative produced official records regarding attendance of the workman and it was stated that the workman absented himself without getting any leave sanctioned and without informing management. It also comes out that the workman did not appear in the enquiry inspite of notice. He did not cross examined the witness nor did he file any evidence in denfese. This is also worth mentioning that he had admitted the charge in his reply to the charge-sheet, which is Ex. M/8.

The settled proposition of law is that the charges need not be proved beyond reasonable doubt in a departmental enquiry. Following judgments are being referred to in this respect.

Scope of disciplinary proceedings and scope of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different. Ref. ***T.N.C.S. Corpn. Ltd. vs. K. Meerabai, (2006) 2 SCC 255***

Standard of proof in a departmental enquiry which is quasicriminal/quasi-judicial in nature: Disciplinary proceedings, however, being quasi-criminal in nature, ***there should be some evidence to prove the charge.*** *Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubts, we cannot lose sight of the fact that the enquiry officer performs a quasi judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. Ref:* ***(i) Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513 (paras 10 , 11, 12 & 13). (ii) M.V. Bijlani Vs. Union of India, (2006) 5 SCC 88 (Para 25)***

In the cases of (i) NOIDA Entrepreneurs Association Vs NOIDA & others, AIR 2007 SC 1161 (i4i) State Bank of India Vs. R.B. Sharma, (2004) 7 SCC 27 (iii) Kendriya Vidyalaya Sangathan Vs. T. Srinivas, (2004) 7 SCC 442 (iv) Depot Manager, APSRTC Vs. Mohd. Yousuf Miya, (1997) 2 SCC 699 (v) Captain M. Paul Anthony Vs. Bharat Gold Mines Limited (1999) 3 SCC 679 and (vi) State of Rajasthan Vs. B.K. Meena, (1996) 6 SCC 417 (vi) Pratap Singh Vs. State of Punjab, AIR 1964 SC 72 (vii) Jang Bahadur Singh Vs. Baij Nath, AIR 1969 SC 30, *it has been laid down by the Hon'ble Supreme Court that "the purpose of departmental enquiry and of prosecution are two different and distinct aspects. Departmental Enquiry is to maintain discipline in the service and efficiency of public service. Crime is an act of commission in violation of law or of omission of public duty. The enquiry in a departmental proceeding relates to the conduct or breach of duty by the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. It is the settled legal position that the strict standard of proof or applicability of the Evidence Act stands excluded in a departmental proceeding. Criminal Proceedings and the departmental proceeding under enquiry can go on simultaneously."*

In the case of ***T.N.C.S. Corporation Ltd. Vs. K. Meerabai, (2006) 2 SCC 255****, it has been held by the Hon'ble Supreme Court that the scopes of the disciplinary proceedings and of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different.*

In the cases of ***Mohd. Saleem Siddiqui Vs. State of UP & others, (2011) 2 UPLBEC 1575 (Allahabad High Court) and Ajeet Kumar Naag Vs. General Manager Indian Oil Corporation Ltd. Haldia, JT 2005 (8) SC 425****, the distinction between departmental enquiry and criminal proceedings has been drawn as under: "The two proceedings i.e. criminal and departmental are entirely different. They operate in different fields and have different objectives. The object of criminal proceedings is to inflict appropriate punishment on offender and the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance service rules the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of accused beyond reasonable doubts, he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability. Procedure with respect to standard of proof in criminal case and departmental enquiry are different. In the case of departmental enquiry the technical rules of evidence have no application and the doctrine of "proof beyond doubt" has also no application in the departmental*

enquiry. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. There would be no bar to proceed simultaneously with departmental enquiry and trial of criminal case. "

Considering the evidence in the enquiry in the light of the above referred judgments, the finding of Enquiry Officer holding the charges proved do not warrant any interference. Accordingly, the charges against the workman are held proved. Issue no.-2 is answered accordingly.

Issue No.-3 :-

The settled proposition of law is that the punishment can be interfered by this Tribunal only when it is so disproportionate to the charge that it shocks the conscience of this Tribunal. Following judgments are being referred to in this respect.

Hon'ble Apex Court in ***B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749*** while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

> ***"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof."***

In ***DG, RPF vs. Sai Babu (2003) 4 SCC 331***, Hon'ble Apex Court has observed that:

> ***"6……. Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department/establishment which the delinquent person concerned works."***

In ***United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364*** Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

> ***"11. The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.***
>
> ***12. To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof.***"

In ***Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257*** Hon'ble Supreme Court reiterated the legal position as follows:

> ***"8. …… The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."***

In ***State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580*** Hon'ble Supreme Court stated that:

> ***"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.***

Hon'ble Apex Court in *Administrator,* ***UnionTerritory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101*** has observed that

> ***"The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.***

This extract is taken fro**m *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721 : 2011 SCC OnLine SC 416 at page 587**

> ***7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)***

In ***Air India Corporation Bombay vs. V.A. Ravellow 1972 (25) FLR 319 (SC)*** it has been observed that:

> ***"Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.***"

In ***Knhaiyalal Agarwal and others vs. Factory Manager, Gwaliar Sugar Co. Ltd. AIR 2001 SC 3645*** Hon'ble Apex Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that:

> ***"Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trust worthiness or reliability of the employee, must be alleged and proved."***

No doubt an employee has to maintain absolute integrity and devotion towards duty. No employer can afford to have an employee on his rolls who is such a habitual absentee, hence the punishment is held proportionate to the charge proved and issue number three is answered accordingly.

Issue No.-4 :

On the basis of findings recorded above, the workman is held entitled to no relief.

Accordingly, the Reference is answered as follows :-

AWARD

Holding the action of Manager, Western Coal Field Limited, Newton, Ganpati Mines, Pench, Parasia, District Chhindwara in terminating the workman justified in law the workman is held entitled to no relief.

No order as to cost.

DATE:- 25/07/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1588.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **निदेशक, भारतीय फिल्म एवं टेलीविजन संस्थान, पुणे; मेसर्स सिग्मा ह्यूमन रिसोर्सेज (इंडिया) प्राइवेट लिमिटेड, मंगलवार पेठ, पुणे,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री अमित कालिदास जगताप, कामगार,** के बीच अनुबंध में निर्दिष्ट **औद्योगिक न्यायाधिकरण, पुणे,पंचाट(संदर्भ संख्या IT/5000045/2015)** को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.08.2024 को प्राप्त हुआ था।

[सं. एल -42012/170/2015-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th August, 2024

S.O. 1588.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. IT/5000045/2015) of the Industrial Tribunal, Pune, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Director, Film and Television Institute of India, Pune; M/s. Sigma Human Resources (India) Pvt. Ltd.,Mangalwar Peth, and Shri Amit Kalidas Jagtap, Worker,** which was received along with soft copy of the award by the Central Government on 13.08.2024.

[No. L-42012/170/15-IR(DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE COURT OF PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PUNE.

Presided Over by Shri. S. G. Dabadgaonkar

Reference IT/5000045/2015

Exhibit No.: O-7

DISPUTE BETWEEN :-

1) The Director,
Film and Television Institute of India,
Law College Road,
Pune 411004. First Party No. 1

2) M/s. Sigma Human Resources (India) Pvt. Ltd.
Office No. 303, 3rd Floor, Block No.3,
Lloyds Chamber, 409, Mangalwar Peth,
Pune – 411 011. .. First Party No.2

AND :-

Shri. Amit Kalidas Jagtap
1341, Kasba Peth, Near Surya Hospital,
Pune 411011. Second Parties and 6 Others,

Advocate for first party No.1 : Smt. Priyanka Telang

None appeared on behalf of first party No.2.

Advocate for second party workers : Shri. S. B. Malegaonkar

AWARD

(Delivered on -02-04-2024)

1. This is a reference forwarded by the Ministry of Labour, Government of India, by order dated 12/11/2015 and 27/11/2015 in exercise of powers under Section 10 (1)(d) and (2-A) of the Industrial Disputes Act, 1947 (for short 'the I.D. Act'). Along with the said order, there is Schedule to the reference. It reads as under -

"Whether the action of the management of Film and Television Institute of India, Pune in not regularizing the services of Shri. Amit Kalidas Jagtap, 2) Shri. Javed Rasul Banedar, 3) Shri. Rahul Rajendra Pawar, 4) Shri. Prakash Nivrutti Kamble, 5) Shri. Mahebooh H. Bhagwan, 6) Shri. Mahesh Atmaram Pawar and 7) Shri. Ramchandra Nathu Ambedkar and putting them on contract basis through contractor is legal and justified ? If not, to what relief the workmen are entitled to ?"

2. Facts of case of second party in brief:-

A. Second party workers have filed their Statement of Claim (Exh. U-5). It is their contention that they are workers within meaning of Section 2(s) of the I.D. Act and working as Studio Assistant in first party No.1. It is an institute which caters to educating students in all aspects of film shooting. Job of second party workers is to help students in handling of equipment as regards film shootings are concerned. The job description of all the above-mentioned Second Party is as per the Annexure with the Statement of Claim. First Party No.1 institute is established as 'Film Institute of India' in 1960. In the year 1971, it was renamed as 'The Film and Television Institute of India' (hereinafter referred to as "FTII"). It is an autonomous body under the Ministry of Information and Broadcasting of the Government of India. There are two film studio floors. Film editing facilities and video editing facilities are available from the low end to high end. The institute has sound department and sound studio dubbing with rock-n-roll projection facilities. On television side there are two Television Studios. The Institute has a full-fledged Graphics Department, Multimedia Laboratory, Book Film and Video Library and Screenings. The FTII functions as an autonomous body under the Ministry of Information and Broadcasting, Government of India and is registered under the Societies' Act of 1860.

B. It is further contention of second party workers that provisions of the I.D. Act are applicable to First Party No.1 as well as First Party No.2. First Party No.2 is the Contractor. Second Party worker are appointed by the FTII. However, after putting more than 240 days of continuous service on the roll of FTII for years together, they were suddenly and illegally put on roll of various contractors without following provisions of Section 9-A of the I.D. Act. It is the contention of Second Party workers that they were '*de jure*' permanent on the roll of FTII. Second party workers were appointed some 18 years ago by the FTII as Studio Assistant and are serving on the same post till date. Their dates of appointment are varying and are specifically mentioned in the Statement of Claim. In the year 2006, second party workers approached First Party No.1 and requested to make them permanent in FTII. The then Director of the FTII assured about making them permanent in the job. The post of Studio Assistant is required round the year as the various courses such as dramatics, dialogue writing, playback, practical etc. require a constant manual backup by studio assistants.

C. First party No. 1 unilaterally put second party workers on the roll of various contractors for different periods such as :-

i) 01/01/2007 to 31/03/2008 – ACES India Pvt. Ltd.

ii) 01/05/2008 to 15/10/2011 – Global Enterprises

iii) 16/10/2011 to 31/12/2013 – Radiant Guard Services Pvt. Ltd.

iv) 01/01/2014 till present – Sigma Human Resources (I) Pvt. Ltd.

The said act was done by the FTII without giving second party workers a notice under Section 9-A of the I.D. Act. First Party No.1 has not followed provisions of The Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'the CLRA Act'). So called contracts entered by the FTII with the contractors are sham and are in negation of the provisions of the CLRA Act and Rules framed thereunder. Salaries of second party workers were deposited in a Bank under the contingency bill form and under the head of advanced adjustments and when the money was withdrawn from the Bank, second party workers were paid on vouchers. Many times, cash advance was taken by one Smt. Shinde on behalf of the FTII, under the head of accounts named Salary. The said exercise was done by the FTII in collusion with contractors only with object to deprive second party workers of their benefits of permanency.

D. It is further case of second party workers that though they are in continuous service since last 18 years, they have been deprived of benefits of permanency and permanent status on the roll of the FTII. Second party workers, therefore, preferred a complaint with the Central Labour Office, Pune. As no effective conciliation took place, the proceedings ended into a failure and the appropriate Government was pleased to make the present reference. It is, therefore, prayed that second party workers be declared to be permanent on the roll of FTII since the first day they completed 240 days of their uninterrupted service. It is further prayed for declaration about the very act of changing rolls of second party workmen from FTII to that of the contractors is illegal being in violation of provisions of Section 9-A of the I.D. Act. It is further prayed to direct first party No.1 to confer permanency status to second party workers with benefits of arrears of permanency.

3. Defence of First Party No.1 :-

A. First party No. 1 has filed Written Statement (Exh. C-3) and denied averments in the Statement of Claim. It is contended that first party No.1 Institute was established in the year 1960 and was registered under the Societies Act, 1860. It is admitted that the Institute is an autonomous body under the Ministry of Information and Broadcasting, which receives grant in aid from the Government of India. The Institute provides high level of professional education and technical expertise in the art and technique of film making and television production. It is contended that the Institute is not covered by the I.D. Act. Being a Society under the Indian Societies Act and being an autonomous institute, provisions under the Industrial Employment (Standing Orders) are not applicable to it.

B. It is contended that this Tribunal has no jurisdiction to try and entertain the present reference as all the employees are duly appointed by the Institute, and their service conditions are covered under and regulated by the provisions of the Administrative Tribunal Act, 1985. Jurisdiction in respect of any service dispute between first party No.1 and its employees, is exclusively with the Central Administrative Tribunal. It is further contended that merely impleading the Director would not amount to impleading the Institution. The claim is therefore bad for misnomer and non-joinder of necessary party in respect of first party No.1.

C. It is further contended that second party workers were hired by the Institute on the basis of 'as and when required' for odd jobs of light boy, studio boy etc. between year 2005-2006 and were duly paid wages on mutually agreed terms. Second party workers were neither issued any appointment letters nor any office order in respect of their regular employment. They have never completed 240 working days as their services were used only for short interval during project/student work in the Institute. The institute started process of hiring workers through outside agencies since January-2007. Institute hired various service providers for providing manpower on 'as and when required' basis. The FTII and First Party No.2 entered into an agreement dated 01/01/2014 to supply technical/ professional/office job manpower in the Institute and it was further extended upto 31st March, 2016.

D. As per terms and condition of the agreement executed between First Party No.1 and First Party No.2, the employees hired and engaged by the institute from first Party No.2 shall be the employees of First Party No.2. It is further contented that first party No. 2 shall make disbursement of wages or statutory dues to the said employees. As per the agreement, second party claimants are workers of First Party No.2 and therefore, there does not exist any employer-employee relationship between Second Party claimants and First Party No.1. Presently, second party workers are employed by M/s. Vishal Enterprises. In absence of employer-employee relationship, the claim of second party workers requires to be dismissed against First Party No.1.

E. First Party No.1 has also filed detailed para wise reply to the Statement of Claim. It is specifically contended that allegations in respect of unfair labour practices are false, frivolous and baseless. Workers have never completed 240 days and their services were used for short interval during project / student work in the Institute. Therefore, these workers are not entitled to benefits of deemed permanency with First Party No.1. It is specifically contended that in view of decisions of *Gangadhar Pillai Vs. Siemens Ltd. [2007 (1) SCC 533]* and *Secretary, State of Karnataka and Ors. Vs. Uma Devi [2006 (4) SCC 1]*, there cannot be regularization of temporary, contractual, casual, daily-wage or *ad hoc* employees appointed or recruited or continued for long period. It is, therefore, prayed to dismiss the claim with costs.

4. As per report of Bailiff (Exh. O-3), notice has been served upon first party No.2, but none appeared before this Tribunal till date nor filed Written Statement to contest the matter. Inadvertently, *ex-parte* order was not passed against it. Subsequently, vide order dated 19/01/2024, *ex-parte* order came to be passed against first party No.2.

5. On the basis of rival pleadings, my Ld. Predecessor has framed issues below Exh. O-4. I am reproducing the said issues with slight changes in accordance with the Schedule to the reference, without changing its meaning, along with my findings thereon for the reasons stated below :-

Sr.No.	Issues	Findings
1)	Whether the action of the first party management in not regularizing the second party employees in services and putting them on contract basis is legal and justified ?	… No.
2)	Whether the second party employees are entitled to the relief as prayed?	… Permanency since January -2023

REASONS

AS TO ISSUES NO. 1 TO 3 :-

6. In order to establish the claim, the second party workers namely Javed Rasul Banedar and Rahul Rajendra Pawar have examined on oath below Exh. U-10 and Exh. U-14 respectively and they reiterated contentions put forth in the Statement of Claim.

7. In rebuttal, the first party company has not examined any witness. Both the parties have produced bunch of documents on record, however, except few, remaining are not duly proved.

8. Argument advanced on behalf of the Ld. Counsel for the Second party workers namely Advocate Shri. Malegaonkar can be highlighted as:-

a) Workers are on the roll of FTII since 2003 onwards,

b) They have completed continuous service of 90 days in each calendar year as per the Industrial Employment (SO.) Central Rules, 1946;

c) These workers are shown to be transferred to the roll of contractors since 2007 without giving notice of change under Section 9-A of the I.D. Act,

d) There is no registration of principal employer or license of contractors under the Contract Labour (Regularization and Abolition) Act, 1970;

e) The workers concerned are terminated during pendency of the present reference by First Party No.2 on 02/07/2018;

f) First Party has not complied with direction issued by the Tribunal vide order Exhibit U-8 Dated 02.12.2017 to produce various documents and therefore, adverse inference is required to be drawn.

g) Contention in oral evidence of witness Shri. Banedar that he was in employment of First Party No.1 since 2003 to 2007 is not denied,

h) Document Exhibit U-19 is an important document which clarify status of workers prior to the period since when contractors came in picture,

i) Reply of First Party to Assistant Labour Commissioner dated 28/04/2015 during the process of conciliation is material evidence to infer that workers concerned are in continuous employment of First Party No.1 prior to inception of contractors.

9. Important points raised by Advocate Smt. Telang for First Party No.1 during final argument can be summarized as :-

a) As per the Administrative Tribunal Act, 1985 and Gazette dated 17/12/1998, the Central Administrative Tribunal is the authority to decide dispute and this Tribunal has no jurisdiction,

b) The claim in the present reference is not in limitation,

c) FTII being an educational institute, is not an industry as defined under the I.D. Act,

d) Workers concerned were in employment as helping hand – on daily /hourly work. There was no permanent post available for these workers.

e) No procedure like interview/appointment have been followed by FTII in respect of these workers and this fact is admitted by witness examined on behalf of workers.

f) If as per argument of the second party, Central Standing Orders are applicable, then the Central Administrative Tribunal is having jurisdiction to entertain the present dispute.

g) Letter dated 28/04/2015 is not at all proved and therefore, cannot be relied upon. Even though in the said letter, words 'as and when required' are used and therefore, this document is not helpful to prove continuous service as claimed by the Second Party.

h) Since 2007, onwards there is no relationship of employer-employee between workers concerned and FTII. Termination of the workers concerned is by contractor.

i) CLRA Act applies where 20 plus workers are in employment. Strength of these workers was below 20 till 2010 and therefore, CLRA Act is not applicable.

j) Letter dated 28/04/2015 from the proceedings of the Labour Commissioner (Central), Pune is not admissible before this Tribunal in view of ratio laid down by the Hon'ble Delhi High Court in *Smriti Madan Kansagra v. Perry Kansagra* (Date of decision 11.12.2017)

k) Burden to prove continuous service of 240 days is always on the Second Party and it cannot be shifted by

drawing any inference against the First Party as per ratio in *Municipal Corporation Faridabad v. Siriniwas* [(2004) 8 SCC 195]

l) In view of decision in *Secretary, State of Karnataka v. Uma Devi 2006 (4) SCC 1*, *Gangadhar Pillai v. Siemens [2007 (1) SCC 533]* and *State of Maharashtra v. Anita (AIR 2016 SC 3333),* claim of permanency in the present reference is required to be rejected.

10. First objection is raised on behalf of first party that the reference is not maintainable before this Industrial Tribunal and the Central Administrative Tribunal is having jurisdiction to entertain the dispute. One more objection is raised that claim of second party workers is not within limitation.

11. This is a reference under Section 10 (1)(d) and (2-A) of the Industrial Disputes Act referred by the Central Government. The Central Government is the sole judge of deciding as to which matter is required to be adjudicated by the Tribunal. The Central Government, after due assessment and after due process, referred the present dispute for adjudication to this Authority. Satisfaction of the Government is the condition precedent to refer dispute under Section 10 of the I.D. Act. Therefore, in my opinion the reference is well maintainable before this Tribunal. As the dispute is referred by the Government for adjudication, in my view, it is not necessary to see the aspect of the limitation also, raised by the first party.

12. I have gone through decision of the Hon'ble Himachal Pradesh High Court in *Himachal Pradesh Agro Industries Corporation Vs. Raj Kumar* (MANU/HP/0043/2001), relied on behalf of second party workers. It is held that the Administrative Tribunal under the Administrative Tribunal Act as well as Industrial Tribunal constituted under the I.D. Act, have concurrent jurisdiction. The employee can either approach to the Administrative Tribunal or Industrial Tribunal. It was further held that he can elect or choose a Forum. The Hon'ble Himachal Pradesh High Court has relied upon Full Bench decision of the Central Administrative Tribunal in *G.M. Southern Railway Vs. Presiding Officer* [(1987) 4 ATC 912].

13. From aforesaid discussion it can be concluded that this Industrial Tribunal is having jurisdiction to entertain the dispute which is referred for adjudication by the Central Government Authority.

14. One more objection is raised on behalf of First Party No.1 that title of the Statement of Claim is incorrect and claim against First Part No.1 is not in the statutory and proper name.

15. I have considered this objection in respect of nomenclature of parties to the dispute. It is required to mention here that this is not a private civil suit where nomenclature has some importance. The question of nomenclature may arise in such civil disputes. This being a reference under the I.D. Act referred by the Central Government for the adjudication, in my view much importance is not required to be given to objection about nomenclature of First Party No.1. Furthermore, this objection was not raised before the Conciliation Authority under the I.D. Act when the matter was pending before the said Authority for conciliation. Had the said objection raised at the relevant time, the concerned Authority would have considered it and would have refer the dispute with correction of nomenclature. Therefore, being a reference forwarded for adjudication and as First Party No.1 has not disputed about said nomenclature during the conciliation, it will cause no adverse effect though Director of the said Institute is implemented as a Party.

16. First Party No.1 has also raised objection that it is not an 'industry' within the meaning of Section 2(j) of the I.D. Act, but is an educational institute. Therefore, the reference is not maintainable. As against this, it is contended on behalf of the second party workers that on earlier occasions also disputes were referred for adjudication by the Appropriate Government to this Industrial Tribunal in which the FTII was the party. It is further contended that similar type of objection about "industry" were raised but same were decided against the FTII. The said matter was taken upto the Hon'ble Supreme Court by the FTII, but it could not succeed.

17. I have gone through copy of Award of the Industrial Tribunal, Pune dated 02/03/2002 in Reference (IT) No. 23/1996 (List Exh. U-31/3). Similar type of objection was raised by First Party in said matter. The Industrial Tribunal, after relying upon decision of the Hon'ble Apex Court in *Benglore Water Supply Vs. A. Rajappa* (AIR 1978 Supreme Court 548), held that the First Party that is FTII is an 'industry'.

18. The said Award was unsuccessfully challenged before the Hon'ble Bombay High Court as well as the Hon'ble Apex Court by the FTII. Copies of decisions of the Hon'ble Bombay High Court as well as the Hon'ble Apex Court are enclosed along with List Exh. U-31 Sr.No.4 and 5. First Party No.1 has not disputed about earlier award rendered by the Industrial Tribunal Pune in Reference IT No. 23/1996 or confirmed subsequently by the Hon'ble Higher Courts. Though, the said dispute was in respect of Canteen Workers of FTII, but objection about FTII being 'industry' was decided in it. Therefore, in my opinion decision in said matter is an answer to the objection raised by the First Party No.1. On the basis of earlier decisions in which FTII was held as an industry, it can be inferred that it is an 'industry'.

19. Objection is also raised that workers concerned were not appointed on any permanent posts. They were

doing helping hand work on daily as well as 'as and when required' basis. Their appointment was not following any process. They have not rendered continuous service as claimed in the Statement of Claim. As such, according to First Party No.1, their claim cannot be considered.

20. As against this, it is the contention of the second party workers that fact of continuous working by these workers is admitted by First Party No.1 in the Conciliation proceedings as per letter dated 28/04/2015 issued under the signature of the Director of FTII. This letter corroborates oral evidence of second party workers that they were working continuously for years.

21. It is required to mention here that letter dated 28/04/2015 was not filed in the present proceedings when documents of reference were received by this Tribunal. Second Party workers filed an application (Exh. U-18) and sought directions for production of said letter. The application was allowed on merit. As per the direction of this Tribunal dated 12/04/2023, original letter dated 28/04/2015 was produced by the Regional Labour Commissioner (Central), Pune along with letter dated 28/04/2023 (Exh. O-6).

22. I have considered original letter dated 28/04/2015 addressed to the Regional Labour Commissioner, Pune during the pendency of matter before the said authority in respect of workers Shri. Amit Jagtap and Others (the present Second Party workers). The said letter was issued under the signature of Shri. U.C. Bokade, Registrar, FTII, Pune. This appears to be additional reply on behalf of FTII before the Labour Commissioner. It is contended in said letter that from January-2007 FTII started appointing contractors for hiring the man power required at FTII and the workers are employed by various out side agencies. It is further mentioned in the said letter that prior to the year 2007, FTII used to hire staff on daily wages under the policy of 'as and when required' basis. The Registrar has also furnished information in tabular format showing engagement of these workers with FTII.

23. As per the tabular statement which is part of letter dated 28/04/2015, names of Second Party workers – Prakash Kamble, Javed Banedar, Rahul Pawar, Ram Ambekar, Amit Jagtap, Mehboob Bhawan and Mahesh Pawar are shown with specification of number of days they worked on daily wages. It appears that name of second party worker namely Mehboob H. Bhagwan is written as "Mehboob Bhawan". In reference order, name of the said worker is shown as Mehboob H. Bhagwan. Neither second party workers nor First Party No.1 have taken care of change of name of this worker. First Party No. 1 has not raised any objection in respect of name "Bhawan" or "Bhagwan". Therefore, I have no alternative to mention said name which is shown in the reference order.

24. This document not disputed by the second party. However, first party no.1 has objection to rely upon this document. It is contention of the Ld. Counsel for the First Party No.1 that this document is not duly proved by leading evidence in the matter. This document was submitted during the Conciliation and therefore, it cannot be used in the present proceedings. Reliance is placed by First Party No.1 upon Smriti Madan's case (supra). This decision is rendered in context of mediation proceedings. Hence, its ratio is not helpful to the First Party in the present matter.

25. Letter dated 28/04/2015 was not proved by the Second Party. However, as per direction of this Tribunal dated 12/04/2023 below Exh. U-18, the Labour Commissioner Authority has produced original letter dated 28/04/2015 bearing signature of the Registrar of FTII. This document is admitted by the second party. Though, this document is disputed by the First Party, but it is on the count of admissibility only and mode of proof. Objection regarding genuineness/truthfulness of the said document is not raised by the First Party. Furthermore, First Party No.1 in its written statement has clearly admitted that workers concerned were performing work of 'Studio Assistant' during the year 2005-2006.

26. In my view for the purpose of deciding the question as to whether workers concerned were in employment of First Party No.1 prior to 2007, letter dated 28/04/2015 coupled with admission of First Party No.1 in its Written Statement, are very important. This is an admission of FTII in respect of engagement of workers concerned with FTII prior to 2007. Therefore, this admission can very well be considered for determination of question referred for adjudication.

27. From letter dated 28/04/2015, it can be inferred that workers namely Ram Ambekar was working on daily wages since June 2005 upto December 2006, Mahesh Pawar was working on daily wages since June 2005 up to December 2006 except November 2006, Prakash Kamble was working since November 2005 till December 2006, Javed Banedar was working on daily wages since July 2006 up to October 2006 and December 2006, Rahul Pawar was working on daily wages since June 2006 up to October 2006 and December 2006, Amit Jagtap was working on daily wages since May 2006 upto October 2006 and December 2006, Mehboob Bhawan was working on daily wages since June 2006 upto September 2006.

28. It is the case of second party workers that since January 2007 onwards they are shown to be working under Contractors. In fact, they were working with FTII but were falsely shown as working under Contractors. The Ld. Counsel for the Second Party strenuously submitted that change of employer since January 2007 is a change in service condition of workers concerned. No notice was given under Section 9-A of the I.D. Act. Therefore, act of First Party No.1, being in breach of provisions of law, is illegal.

29. Section 9-A of the I.D. Act imposes restrictions on employer to effect change of service condition applicable to any workman in respect of any matter specified in the Fourth Schedule. The employer is supposed to follow mandatory provisions laid down in Section 9-A prior to effecting such change.

30. Fourth Schedule of the I.D. Act is the list of 11 items for which notice of change as contemplated under Section 9-A is required. Item 11 of the Fourth Schedule is relevant. Therefore, the said item is reproduced as under :-

> *11 :- Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or shift, not occasioned by circumstances over which the employer has no control.*

31. As per document that is letter dated 28/04/2015 except worker Mehboob Bhawan (as per the reference order "Bhagwan") remaining six workers were working in FTII till the December 2006. It is contention of witnesses examined on behalf of second party workers that they continued in employment of FTII till raising dispute before the Conciliation Authority that is till 2015, but they were falsely shown as employees of various contractors from time to time.

32. As discussed above, reduction of second party workers from employment of FTII since January 2007 by showing them under Contractors without following procedure laid down in Section 9-A of the I.D. Act amounts to breach of provisions of the I.D. Act and therefore, is illegal. As such, workers concerned can very well be presumed to be in employment First Party No.1 since January 2007 till filing of the reference and thereafter till 02/07/2018 which is undisputedly date of their termination of employment by the last Contractor.

33. One more aspect needs consideration is that as per order below Exh. U-8 dated 02/12/2017 direction was issued against the First Party No.1 to produce various documents which include muster roll, name of contractors from January 2007 to July 2018, copy of agreements executed with contractors for the said period and some other documents. First Party No.1 admittedly has not abided the said order. Therefore, definitely inference can be drawn that if these documents, which are in custody of First Party No.1, would be produced, it might cause hardship to its rights or might be helpful to Second Party workers.

34. The Contract Labour (Regulation and Abolition) Act, 1970 provides for registration of principal employer and licence to contractors. In spite of direction of this Tribunal, First Party No.1 has not produced such documents since 2007. Though, argument of First Party is accepted that till 2010, strength of contract workers was below 20 and therefore, it was not mandatory to seek registration under the said Act, still question arises as to why FTII has not produced muster-roll or agreements executed with the contractors.

35. Oral evidence of witnesses examined on behalf of the second party goes to establish that they are in employment of First Party No.1 since 2003 onwards till December-2006. Documentary evidence more particularly letter dated 28/04/2015 produced by the Regional Labour Commissioner (Central), Pune, copy of contingency bill (Exh. U-19) proved by second party workers, if read conjointly with the oral evidence, goes to establish the fact that workers concerned were in employment of First Party No.1 till December 2006 and thereafter till 02/07/2018 in employment of First Party No.1 but shown to be working through contractors.

36. First Party No.1 has admittedly not laid any oral evidence to rebut evidence laid on behalf of second party. Therefore, second party workers have successfully established that they were in employment of First Party No.1 since 2003 onwards till filing of the present reference that is till 2015 and thereafter till 02/07/2018 when they were shown to be terminated by the Contractor. The first party No.1 has changed employer of workers concerned unillaterly and by violating provisions of the I.D. Act. Therefore, inference can be drawn that First party No.1 in order to avoid benefits of permanency to these workers, changed their service condition, falsely shown them as workers of contractors. This act of First Party No.1 is not justified being illegal and in violation of provisions of law. Therefore, contentions of First Party No.1 that it has no relationship of employer-employee with Second Party workers, cannot be accepted.

37. Workers concerned have claimed permanency in the employment of First Party No.1. It is their contention that work is continuously available and there are vacant posts.

38. As against this First Party No.1 has contended that in view of decision of Constitution Bench of the Hon'ble Apex Court in *Uma Devi* as well as decision in *Gangadhar Pillai* (supra), even though workers concerned have completed continuous service for some period, they are not entitled to automatic permanency unless vacant posts are available.

39. Ratio in *Secretary, State of Karnataka v. Uma Devi 2006 (4) SCC 1*, *Gangadhar Pillai v. Siemens [2007 (1) SCC 533]* and *State of Maharashtra v. Anita (AIR 2016 SC 3333)* relied upon by the First Party No.1 cannot be disputed. It is a well settled proposition of law that mere continuation of work by the employee for some period or substantial period does not confer him a right to get permanency in a state instrumentality like FTII. For that purpose, various factors are required to be considered which include necessity of work, availability of vacant posts, sanction of such post by appropriate Authority etc.

40. To show availability of vacant posts the second party workers have relied upon recent advertisement No. 01/2023 issued on behalf of First Party No.1 by its Registrar (List Exh. U-27/1). This advertisement is not disputed on behalf of First Party No.1. This advertisement invites applications for direct recruitment on as much as 30 different regular posts in FTII. At Sr. No. 30, posts of 'Studio Assistant' is shown. Against this posts, number of vacancies are shown as 15, out of which 14 are for general category and one is reserved for Scheduled Tribes. It is clear from aforesaid advertisement published on behalf of First Party No.1 that there are approximately 15 vacant posts of 'Studio Assistant' in FTII since 2023. Second Party workers have established that they are working as 'Studio Assistant' in FTII since 2003 onwards till their termination dated 02/07/2018. Hence, they are entitled to get permanency on the said posts since when the posts are vacant and available.

41. It is therefore clear from above evidence that vacant posts of 'Studio Assistant' are available in FTII for which it has published advertisement. The workers concerned have successfully established that they worked as a Studio Assistant continuously from 2003 onwards directly under FTII till December 2006 and thereafter, till July 2018 under different Contractors deployed by First Party No.1 under a sham relation of contractor by violating provisions of law. This fact also goes to establish that work is continuously available with FTII.

42. The workers concerned are definitely having good experience to work as 'Studio Assistant' for years. Therefore, if permanency is granted to them on vacant posts available with FTII, it will mitigate the circumstances. No harm will cause to First Party No.1 as it is in need of the said work continuously, it will get experienced person to do the said work and it has sufficient vacant posts to occupy second party workers in its employment. Therefore, demand of permanency in the employment of First Party No.1 at least since January 2023 that is since from publication of advertisement No. 01/2023 by FTII showing vacant posts of 'Studio Assistants', is justified. The workers concerned are, therefore, entitled for permanency in First Party No.1 since January 2023. Hence, I answer issue No. 1 in the negative, issue No. 2 accordingly and in answer to issue No.3, pass the following Award :-

AWARD

1. The reference is answered as follows :-

   a. It is hereby declared that action of First Party No.1 FTII, Pune in not regularizing services of 1) Shri. Amit Kalidas Jagtap, 2) Shri. Javed Rasul Banedar, 3) Shri. Rahul Rajednra Pawar, 4) Shri. Prakash Nivrutti Kamble, 5) Shri. Maheboob H. Bhagwan, 6) Shri. Mahesh Atmaram Pawar and 7) Shri. Ramchandra Nathu Ambedkar as mentioned in reference order (corrigendum) dated 27/11/2015 and putting them on contract basis through contractors is illegal and unjustified.

   b. The aforesaid workers mentioned in para No. 1.a. are entitled to get all benefits of permanency since January – 2023 in FTII, Pune.

   c. First Party No. 1 shall implement the award within 3 months.

2. Inform the appropriate Government as per rules.

3. Proceedings are closed.

Date : 02-04-2024.

S. G. DABADGAONKAR, Presiding Officer

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1589.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण **में,केन्द्रीय सरकार मेसर्स डायनामिक इंटरप्राइजेज, द्वारा-श्री शेओ प्रसाद मीना, प्रोपराइटर, इंद्रलोक नगर, रतलाम,**प्रबंधतंत्र के संबद्ध नियोजकों और **श्री राम सेवक जोठे, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, जबलपुर पंचाट(संदर्भ संख्या CGIT/LC/R/**11/2021**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.08.2024 को प्राप्त हुआ था।

[सं.-एल-42025/07/2024-आईआर(डीयू)-146]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th August, 2024

S.O. 1589.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/11/2021) of the **Central Government Industrial Tribunal cum Labour Court, Jabalpur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s. Dynamic Enterprises,Through – Shri Sheo Prasad Meena, Proprietor, Indralok Nagar, Ratlam, and Shri Ram Sewak Jothe, Worker,** which was received along with soft copy of the award by the Central Government on 13.08.2024.

[No. L-42025/07/2024-IR(DU)-146]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/11/2021

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Ram Sewak Jothe

Rajendrapura, Ward Number-4

Purani Itarsi, Itarsi

Distt-Hoshangabad-461111 (MP)

Workman

Versus

M/s. Dynamic Enterprises

Through – Shri Sheo Prasad Meena

Proprietor, 106, Globus Township,

Near Indralok Nagar, Ratlam-457001 (MP)

Management

AWARD

(Passed on this 31st day of July-2024.)

As per letter dated 28/12/2020 by the Deputy Chief Labour Commissioner (Central), Jabalpur, Ministry of Labour, New Delhi as made this reference to the Tribunal under section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per reference number F. No. J-1(1-49)/2020-IR dt. 28/12/2020. The dispute under reference related to:-

''कया कर्मकार श्री रामसेवक जोठे, ठेका श्रमिक को मैसर्स डाइनेमक एंटरप्राइजेस द्वारा काम से निकाला जाना न्यायोचित है ? यदि नहीं, तो उक्त कर्मकार कब से और किन लाभों के साथ नौकरी पर पुनः बहाल किया जाना चाहिए ?''

After registering the case on the basis of the reference received, Notices were sent to the parties and were duly served on them. The workman appeared and filed his statements of claim. No one appeared on behalf of Railways and M/s. Dynamic Enterprises, the contractors.

The case of the workman, in short is that he was appointed on 01.01.2020 by the contractors as Watering Staff at Railway Station Itarsi within West Central Railway who were the principal employer. He was terminated without notice or wages in lieu of one month notice and without payment of retrenchment compensation, in violation of the provision of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act, 1947). He requested that holding his termination against law, he be held entitled to reinstatement with back wages and benefits and also entitled to be regularized.

In evidence, the workman has filed his affidavit. He has filed photocopy documents which he did not care to prove.

Management did not file any affidavit of its witness or any document.

None appeared for managements at the time of argument. Mr. R.K. Soni appeared for workman. I have heard his argument and have gone through the record.

The reference itself is the issue for determination.

The initial burden to prove its case is on the workman. He has neither pleaded nor has stated in his affidavit that he worked for 240 days in a year continuously. He nowhere discloses the date of his termination. He did not prove the photocopy documents filed by him. Hence, the fact that he worked for 240 days continuously with his employer in a year is held not proved and on this finding, he is held not entitled to protection of Section 25-F & 25-G of the Act. Accordingly, his termination is held not unjustified. The workman is also held entitled to no relief.

Hence, holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly. No order as to cost.

DATE: 31/07/2024

. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1590.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण **में,केन्द्रीय सरकार अध्यक्ष, बीएचईएल सहकारी समिति, साकेत नगर, हबीबगंज, भोपाल (म.प्र.),** प्रबंधतंत्र के संबद्ध नियोजकों और **श्री संजय सहारे, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, जबलपुर पंचाट(संदर्भ संख्या CGIT/LC/R/**17/2023**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.08.2024 को प्राप्त हुआ था।

[सं.-एल-42025/07/2024-आईआर(डीयू)-147]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th August, 2024

S.O. 1590.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/17/2023) of the **Central Government Industrial Tribunal cum Labour Court, Jabalpur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The President, BHEL Co-Operative Society, Saket Nagar, Habibganj, Bhopal (M.P.), and Shri Sanjay Sahare, Worker,** which was received along with soft copy of the award by the Central Government on 13.08.2024.

[No. L-42025/07/2024-IR(DU)-147]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/17/2023

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Sanjay Sahare,

House No. 1113, N-2,

D-Sector, Piplani,

Bhopal (M.P.)

Workman

Versus

The President,

BHEL Co-Operative Society,

248, 2A, Saket Nagar,

Habibganj,

Bhopal (M.P.)

Management

A W A R D

(Passed on this 30th day of July-2024.)

As per letter dated 02/03/2023 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number J-1(1-22)/2022-IR dt. 02/03/2023. The dispute under reference related to :-

" क्या कर्मकार श्री संजय सहारे को, बीएचईएल सोसायटी प्रबंधन द्वारा सेवा से अवैध रुप से निकाला जाना न्यायोचित है? यदि नहीं, तो क्या श्री संजय सहारे में पुर्नबहाल होने के हकदार है? "

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of the allotment of time and service of notice, the workman never turned up and submitted his statement of claim. Management also did not file its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 30/07/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1591.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **निदेशक, मेसर्स एपेक्स लॉजिस्टिक्स, जामनगर, गुजरात; प्रमुख-एचआर, मेसर्स लार्सन एंड टर्बो लिमिटेड, रामबिल्ली, अनकापल्ले,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री के श्रीनिवास राव, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट(संदर्भ संख्या 11/2024) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13/08/2024 को प्राप्त हुआ था।

[सं. एल-42025/07/2024-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th August, 2024

S.O. 1591.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2024) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Director, M/s Apex Logistics, Jamnagar, Gujarat; The Head-HR, M/s Larsen & Turbo Limited, Rambilli, Anakapalle, and Shri K Srinivasa Rao, Worker,** which was received along with soft copy of the award by the Central Government on 13/08/2024.

[No. L-42025/07/2024-IR(DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 25th day of June, 2024

INDUSTRIAL DISPUTE No. 11/2024

Between:

Sri K SrinivasaRao,

Veduruvada, Atchuthapuram,

Anakapalli,

Amdhra Pradesh-531001. .. .Petitioner

AND

1. The Director,
   M/s Apex Logistics, 2nd Floor,
   K.P House, Opp. Dhanvantri Ground
   Pandit Nahru Marg,
   Jamnagar-361008, Gujarat.
2. The Head-HR,
   M/s Larsen & Turbo Limited,
   NAOB, Rambilli,
   Anakapalle-531061.

… Respondent

Appearances:

For the Petitioner : None

For the Respondent: None

A W A R D

The Government of India, Ministry of Labour by its order No.8/7/2024-B1 dated 08.03.2024 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s Apex Logistics & M/s Larsen & Turbo Limited and their workmen. The reference is,

SCHEDULE

"Whether the action of the management of M/s Apex Logistics, Contractor of M/s Larsen & Turbo Limited, main contractor of NAOB, Rambilli, Anakapalle in terminating the services of Sri K.Srinivasa Rao without complying Section 25-F of Industrial Disputes Act, 1947 is legal and justified or not? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 11/2024 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for appearance. Notice sent on petitioner is returned with endorsement insufficient address". However, on 24.4.2024, the Petitioner was informed through mobile number as mentioned with Petitioner's address in reference. Despite intimation, Petitioner did not appear and not filed any claim statement. It seems he don't want to prosecute his case. Hence, 'No Claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri Vinay Panghal, LDC corrected by me on this the 25th day of June, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1592.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **क्षेत्रीय प्रबंधक, राष्ट्रीय बीज निगम लिमिटेड, लालगुडा, सिकंदराबाद; क्षेत्र प्रबंधक, राष्ट्रीय बीज निगम लिमिटेड, औद्योगिक एस्टेट, कुरनूल,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री एम. सुरेश बाबू, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट(संदर्भ संख्या L.C. No. 58/2008) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13/08/2024 को प्राप्त हुआ था।

[सं. एल-42025/07/2024-143-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th August, 2024

S.O. 1592.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. L.C. No. 58/2008) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Regional Manager, National Seeds Corporation Ltd.,Lalaguda, Secunderabad; The Area Manager, National Seeds Corporation Ltd., Industrial Estate, Kurnool, and Shri M. Suresh Babu, Worker,** which was received along with soft copy of the award by the Central Government on 13/08/2024.

[No. L-42025/07/2024-143-IR(DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 24th day of July, 2024

INDUSTRIAL DISPUTE L.C.No. 58/2008

Between:

Sri M. Suresh Babu,

S/o Tippanna,

R/o C/o B. Ramudu,

36-46-79, Chittari street,

I-Town, Kurnool – 518 001. .....Petitioner

AND

1. The Regional Manager,
National Seeds Corporation Ltd.,
Lalaguda, Secunderabad -17.

2. The Area Manager,
National Seeds Corporation Ltd.,
Shed No.3 & 4, Industrial Estate,
Kurnool – 518 001.
Kurnool District. ….Respondents

Appearances:

For the Petitioner : M/s. A.K. Jayaprakash Rao, P. Sudha, M. Govind & Venkatesh Dixit, Advocates

For the Respondent: Sri K. Lakshmi Narasimha, Advocate

AWARD

Sri M. Suresh Babu, who worked as daily wage worker (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents National Seeds Corporation Ltd., seeking for setting aside the oral order of retrenchment dated 1.4.2007 and subsequent order in Lr.No.WPMP11021/2007//NSC-KNL/2008-09/415 dated 30.7.2008 and grant relief of reinstatement into service with full back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The brief facts as averred in the claim statement filed by the Petitioner are as follows**:-

The Petitioner submitted that he has joined the service of the second Respondent corporation as daily wage worker in May, 1994 and worked continuously till he was illegally and orally terminated with effect from 1st April 2007. It is submitted that questioning the said termination order, Petitioner along with other employees, filed WP No.8590/ 2007 and the Hon'ble High Court of Andhra Pradesh granted interim direction to continue them in service. Accordingly, the Petitioner along with other employees continued in service. It is submitted that the WP No.8590/2007 was dismissed by Hon'ble High Court granting liberty to the Petitioner to approach the Labour Court for necessary relief. It is submitted that Petitioner has worked continuously without any interruption and completed more than 240 days service. Further, it is submitted that he was orally and abruptly terminated by the 2nd Respondent on 1.4.2007 without giving any notice, notice, pay and retrenchment compensation as contemplated under Section 25 F of Industrial Disputes Act, 1947. It is submitted that the respondents have adopted unfair labour practice by retrenching the petitioner. The Respondent entrusted the work to outsourcing agency. Further, it is submitted that the nature of work which Petitioner was discharging is permanent and perennial nature of work. Consequent to the dismissal of the Petitioner, 2nd Respondent again asked the Petitioner not to attend the office with effect from 29.7.2008. It is submitted that even the 2nd Respondent addressed a letter to the 1st Respondent dated 11.5.2007 giving details of number of days worked by the Petitioner since there is necessity to continue the Petitioner in service as he was working in clerical side and his presence is very much essential for day to day transaction. It is submitted that Petitioner was engaged to attend maintenance of all production, Record works like writing of all forms and submission to agency, preparing MPR, making entries of GCMs, adjustment bills of growers in the Seed industry and liaison work with certification agency and also used to prepare sale counter statements and computer job works etc.. It is submitted that Respondent corporation did not assign any reason for retrenching him. Therefore, the order of retrenchment is not only illegal but it is unjust, contrary to law and violative of Article 21 of the Constitution of India. Petitioner submitted that he has worked continuously from 1994 to 1.4.2007 and again from 1.4.2007 to 29.7.2008 continuously. Further, it is submitted that now he is overaged and there is no possibility of getting any alternate employment and Petitioner with great expectations from the Respondent corporation discharged his duties sincerely without giving any room for any complaint. Petitioner made a request for regularization of his services along with other employees and on the basis of their request made by the Petitioner and other employees, he was also called for interview at New Delhi on 14.5.2008 for the post of Lab Attendant. Accordingly, Petitioner attended the interview and the results of interview were not communicated to him. Further, it is submitted that several juniors of Petitioner namely, S/Sri S. Subbaiah, M.M.Subramanyam and Narayana were retained by respondent. Therefore, the order of retrenchment is illegal and invalid and the same is in violation of Section 25 G&H of the Industrial Disputes Act. It is submitted that the respondents have not prepared any seniority list, which is mandatory under the Andhra Pradesh Industrial Disputes rules. Since the date of his illegal retrenchment Petitioner remained unemployed as he could not secure any alternate employment inspite of his best efforts. Therefore it is prayed, to set aside the oral order of retrenchment dated 1.4.2007 and subsequent order in Lr.No.WPMP11021/2007/NSC-KNL/2008-09/415, dated 30.7. 2008.

3. **Respondent filed counter denying the averments of the Petitioner as under**:-

It is submitted that the Petitioner joined in the corporation as casual daily wage worker on need basis through gate employment in the year 1995. The Petitioner has not been appointed in terms of any rules or regulations of the organization and hence cannot claim any benefit as sought for. Respondent is a Government of India undertaking under the administrative control of Ministry of Agriculture, Government of India and was set up in March 1963 to organize the development of sound seed industry in the in India with the head office at New Delhi and having its processing unit at Kurnool under Hyderabad region. Corporation is established with an objective of providing quality seed to the farmers throughout the country and Respondent is engaging seasonal workers on daily wages basis in every season to meet the processing and packing activities undertaken by these schedule unit on actual need basis through gate employment and the corresponding minimum wages are being released to the workers as per the Minimum Wages Act. These labourers were free to work in any other establishment and Respondent have no binding of employee and employer relationship. The headquarters of NSC took policy decision during the month of March, 2006, vide H.O. letterNo:16(9)/NSC-Engg./05-06 to call for tenders for these type of works to discontinue with D/W working system. In response to the above tender notification, tender was given to M/s. Thrupthi Enterprises, No.33. 3rd floor, first main, Mahalakshmi layout, Bangalore-96 vide job order dated 19th January 2007 for the above purpose, valid from 22.1.2007 to 21.1.2008 and made effect from 22.1.2007. The contractor took over the job, specifically in the tender. Therefore, with effect from 22.1.2007, the services of Petitioner including this work dispensed with, as at present, there is no work in the Corporation to reemploy the petitioner. In fact, there was no casual terms and conditions except that they were taken on seasonal basis on D/W only when there is work and that was also dispensed with effect from 31st March 2007. It is submitted that Petitioner has not made out any case for interference from this court and hence, the ID may be Dismissed.

4. On the basis of rival pleadings of both the parties following points emerge for determination in this case:-

I. Whether the action of the Respondent in terminating the services of the workman Sri M. Suresh Babu is legal and justified?

II. Whether the Workman is entitled for reinstatement into the service?

III. To what relief, if any, the Petitioner is entitled?

Findings:-

5. **Point No. I**:- The claimant has examined himself as WW1 and in his sworn testimony, WW1 stated that he joined the services of the 2nd Respondent Corporation as a daily wage worker in March, 1994 and continuously worked till he was illegally and orally terminated from the service by the Respondent Corporation w.e.f. 1st April, 2007. Further, WW1 states that he filed a writ petition No.8590 of 2007 before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court granted the interim direction to continue the Petitioner in the service. Therefore, further he was continued in service from 1.4.2007 to 29.7.2008. Hon'ble High Court dismissed his petition vide order dated 11.7.2008 giving liberty to the Petitioner to approach the Labour Court for necessary relief.

6. Further, WW1 states that he was directly appointed as daily wager by the Respondent corporation and he worked under the supervision of the Respondent Corporation and his salaries were paid by the Respondent corporation only. Further, WW1 states that the Respondent corporation used to maintain the attendance register and in every completed year of service claimant has completed more than 240 days of service. Further, WW1 states that in most of the completed years of service, he has put in more than 240 days of service. Witness also states that from the date of joining service, he was working in the clerical side and also used to maintain all production record works like writing of all forms and submission to agency preparing MPR, making entries of GCMs adjustment bills of growers in the seed directory and liaison work with certification agency. Further, WW1 states that Respondent corporation has also utilised his services for computer job pertaining to all the sections of the corporation and the work done was of permanent, continuous and perennial nature in the Respondent corporation. Further WW1 states that while orally terminating the services, Respondent corporation has not issued any notice nor gave notice Pay in lieu of the notice. Respondent failed to pay the retrenchment compensation as contemplated under Section 25 F of the Industrial Disputes Act, 1947. Therefore, Petitioner submits that the said oral termination of the Petitioner from service by the Respondent is illegal, unjust, colourable exercise of power, victimization and unfair labour practice and liable to be set aside.

7. Claimant has also filed six documents in evidence and witness WW1 has exhibited these documents as Ex.W1 to W6. WW1 was cross examined at length by the Respondent but nothing contradictory has been elicited in the cross examination of the witness. WW1 in his cross examination has stated that he worked upto the year 2008 and used to get his payment through muster roll basing on attendance register. The witness is shown Xerox copy of muster roll Register showing the number of days, duties attended by the witness. Further, witness stated that he worked for more than 240 days in every calendar year under NSCL. Thus, in his cross examination WW1 has corroborated his statement of chief affidavit and also corroborated his statement with the document in evidence. The documents filed in evidence by the Petitioner are, Ex.W1 is the dismissal order of Petitioner, Ex.W2 is the order

passed in WP No.8590/2007 dated 11.7.2008, Ex.W3 is the details of return of daily wage workers sent by Area Manager to Regional Manager, NSCL dated 18.7.2005, that goes to show that the claimant joined the service of the Respondent as a daily wage worker in May, 1994 along with other workmen. Ex.W4, is the letter from Area Manager addressed to the Regional Manager, NSCL dated 11.5.2007, wherein explaining the reasons for engaging daily wage labourers, and the name of the Petitioner appears at Sl.No.3 and further showing the number of days worked by the Petitioner of which details reveals that in the year 1994- 95 Claimant had worked for 292 days ; in the year 1995-96 worked for 328 days, in the year 1996-97 worked for 327 days; in the year 97-98 worked for 316 days, in 1998-99 worked for 312 days, in 1999-2000 worked for 315 days; in 2000-01 worked for 345 days, in 2001-02 worked for 330 days; in 2002-03 worked for 297 days; in 2003-04 worked for 253 days; in 2004-05 worked for 48 days; in 2005-06 worked for 269 days and in 2006-07 had worked for 254 days. The details enumerated in the Ex.W4 corroborate the version of the claimant that he had worked in the Respondent corporation as a daily wage worker and he has worked for 240 days or more continuously not only in each calendar year but also in the calendar year just preceding from the date of his termination i.e., 2006-2007. Further, Ex.W5 is statement showing the details of bonus granted to daily wage workers in the year 2007 and that goes to show that the claimant Sri M. Suresh Babu was also awarded the bonus for the period from April 2007 to March 2008 for a total of 256 days. Further, it has come in evidence that Petitioner has worked during his engagement as daily wager to the utmost satisfaction of the Respondent corporation. Further, Ex. W6 is the detailed statement of the daily wage persons who has attended for office/ plant work during the Holidays for which they have been paid the wages. These documents further goes to show that claimant and other daily wage workers had also worked on holidays for which they have been paid the wages as per rule.

8. On the other hand, Respondent has filed chief affidavit of MW1, Sri M.V. Sudhakar but despite sufficient opportunity extended to MW1 for cross examination, witness did not turn up. Therefore, the statement of chief affidavit of MW1 in absence of his cross examination cannot be read in evidence and the contention of the Respondent remained unproved in the absence of any corroborating evidence. Further, the documentary evidence filed by the Respondent in support of his contentions also remained unproved in the absence of evidence of any witness. Thus, the oral and documentary evidence produced by the Petitioner in support of his averment remained uncontraverted. However, Respondent in his counter has admitted that claimant Sri M Suresh Babu has worked as casual daily wager on need basis in the year 1995 and as there was no sufficient work for him in the processing plant used for recording work, he was disengaged. Further, it is contended that Petitioner was not appointed in terms of any rules and regulations and Petitioner cannot claim any benefit as he sought for in the ID. Thus, the Respondent himself admitted the fact that the Petitioner had worked in the Respondent corporation as daily wage worker since 1995. As the Petitioner had worked as daily wager in the Respondent Corporation since 1994 upto 2008, therefore, he is covered under the definition of Workman as defined in Section 2(ss) of the I.D. Act, 1947 and provision of I.D. Act, 1947 equally applies to his case. Now let us examine whether the Petitioner Workman has been terminated in contravention of the provision of section 25 F of the ID Act.

Section 25F provides:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

As per oral and documentary evidence on record, it is undisputedly proved that the Petitioner workman has worked as a daily wager since 1995 up to 2007-08 in Respondent corporation and has almost completed 240 days continuous working days in each calendar year of service. Admittedly, Respondent did not issue any notice to him before his retrenchment from the service and did not paid any wages in lieu of the notice period. Further, no compensation was paid to the Workman for his retrenchment. Thus, under these circumstances, the action of the Respondent in terminating the services of the Workman without issuing notice or without payment of compensation is found to be in contravention of provision of section 25 F of the I.D. Act, 1947 and the action of the Respondent in the present matter in terminating the services of the Petitioner under these circumstances is neither legal nor justified.

Thus, Point No.I is answered accordingly.

9. **Points No.II & III**: - Since, the finding given at Point No.I, that action of the Respondent in terminating the services of the Petitioner Sri M. Suresh Babu was found neither legal nor justified. Now, question arises

whether claim of the Workman for reinstatement into the service is liable to be allowed. As a matter of fact, the Workman who worked as daily wager in the Respondent corporation, has been terminated from the service in the year 2008 and he has put in 14 years of service in the Respondent organization. Now, he has attained the age of superannuation from the service. Even after putting in 14 years of service in the Respondent corporation and that was without any blemish, the workman has been terminated from service by the Respondent illegally. At this juncture he may not be in a position to find another job as being overaged. Therefore, under these circumstances, appropriate relief to the Workman in this matter would be to grant him compensation for his illegal termination from the service.

In this regard, Hon'ble Apex Court in the case of in the case of BSNL Vs. Bhurumal, Civil Appeal No.10957/2015 have held:-

"It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee." Jagbir Singh has been applied very recently in Telegraph Deptt. V. Santosh Kumar Seal[12], wherein this Court stated: (SCC p.777, para ll) "In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious."

26. Applying the aforesaid principles, let us discuss the present case. We find that the Respondent was working as a daily wager. Moreover, the termination took place more than 11 years ago. No doubt, as per the respondent, he had worked for 15 years. However, the fact remains that no direct evidence for working 15 years has been furnished by the Respondent and most of his documents are relatable to two years,i.e., 2001 and 2002. Therefore, this fact becomes relevant when it comes to giving the relief. Judicial notice can also be taken of the fact that the need of lineman in the telephone department is drastically reduced after the advancement of technology. For all these reasons, we are of the view that ends of justice would be met by granting compensation in lieu of reinstatement."

Similarly, in the present matter, Petitioner has been terminated in violation of provision of Sec.25F of I.D. Act, 1947 and in the facts and circumstances of the case he is entitled for getting compensation. Therefore, in view of the law laid down by the Apex court and in the facts and circumstances of the case the grant of compensation in lieu of the reinstatement would be appropriate relief in the present matter.

10. Now question arises how much compensation would be befitting in the present matter so as to make the good to the Petitioner Workman. As the Petitioner has put in his service in the Respondent corporation and after serving for such a long period he would not be in a position to get any other employment to earn bread for dependent members of his family. Therefore, in such circumstances, In view of facts and circumstances of the case the grant of Rs.2,00,000/- (Rupees two lakhs only) as a compensation to the Workman in lieu of illegal dismissal would be appropriate relief.

Thus, Points No.II & III are answered accordingly.

AWARD

In view of the fore gone discussion and finding given at Points No.I II &III, I am of the considered view that the action of the Respondent M/s. National Seeds Corporation Ltd., in terminating the services of the Petitioner Sri M. Suresh Babu is held illegal and unjustified as being in violation of provision of Sec.25F of the I.D. Act, 1947. As such, the oral termination order dated 1.4.2007 is hereby set aside. Since he has been terminated from the service in the year 2007 and long period has been elapsed since then, therefore, the Petitioner is entitled to get a compensation of Rs.2,00,000(Rupees Two Lakhs only) for his illegal termination from service. Thereby the Respondent is directed to pay the compensation amount to Petitioner within two months after receiving copy of this award, with all attendant benefits due to the Petitioner, failing which he has to pay the interest of 12% p.a..

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 24th day of July, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Suresh Babu	NIL

Documents marked for the Petitioner

Ex.W1:	Photostat copy of termination order dt.30.7.2008
Ex.W2:	Photostat copy of order passed in WP No.8590/2007
Ex.W3:	Photostat copy of returns of the daily wage workers at NSC, Kurnool as on 1.7.2005, dt. 18.7.2005
Ex.W4:	Photostat copy of details of No. of days of the daily wage workers, from Area manager, Kurnool to Regional Manager, NSC Ltd., Secunderabad dt.11.5.2007
Ex.W5:	Photostat copy of statement showing Bonus of daily wage workers dt.22.5.2008
Ex.W6:	Photostat copy of details of Petitioner working on holidays with Respondent No.2

Documents marked for the Respondent

NIL

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1593.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **क्षेत्रीय प्रबंधक, राष्ट्रीय बीज निगम लिमिटेड, लालगुडा, सिकंदराबाद; क्षेत्र प्रबंधक, राष्ट्रीय बीज निगम लिमिटेड, औद्योगिक एस्टेट, कुरनूल,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री एस. अब्दुल रहीम,कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट(संदर्भ संख्या L.C.No. 59/2008) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13/08/2024 को प्राप्त हुआ था।

[सं.-एल-42025/07/2024-144-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th August, 2024

S.O. 1593.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. L.C.No. 59/2008) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Regional Manager, National Seeds Corporation Ltd.,Lalaguda, Secunderabad; The Area Manager, National Seeds Corporation Ltd., Industrial Estate, Kurnool, and Shri S. Abdul Rahim, Worker,** which was received along with soft copy of the award by the Central Government on 13/08/2024.

[No. L-42025/07/2024-144-IR(DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 30th day of July, 2024

INDUSTRIAL DISPUTE L.C.No. 59/2008

Between:

Sri S. Abdul Rahim,

S/o Abdul Sattar,

R/o 17-173, R.K. Talkies Street,

Kurnool – 518 001. .....Petitioner

AND

1. The Regional Manager,
   National Seeds Corporation Ltd.,
   Lalaguda, Secunderabad -17.
2. The Area Manager,
   National Seeds Corporation Ltd.,
   Shed No.3 & 4, Industrial Estate,
   Kurnool – 518 001.
   Kurnool District. ....Respondents

Appearances:

For the Petitioner : M/s. A.K. Jayaprakash Rao, P. Sudha, M. Govind & Venkatesh Dixit, Advocates

For the Respondent: Sri K. Lakshmi Narasimha, Advocate

AWARD

Sri S. Abdul Rahim, who worked as daily wage worker (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents National Seeds Corporation Ltd., seeking for setting aside the oral order of retrenchment dated 1.4.2007 and subsequent order in Lr.No.WPMP11021/2007//NSC-KNL/2008-09/416 dated 30.7.2008 and grant relief of reinstatement into service with full back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The brief facts as averred in the claim statement filed by the Petitioner are as follows**:-

The Petitioner submitted that he has joined the service of the second Respondent corporation as daily wage worker in January, 1995 and worked continuously till he was illegally and orally terminated with effect from 1st April 2007. It is submitted that questioning the said termination order, Petitioner along with other employees, filed WP No.8590/ 2007 and the Hon'ble High Court of Andhra Pradesh granted interim direction to continue them in service. Accordingly, the Petitioner along with other employees continued in service. It is submitted that the WP No.8590/2007 was dismissed by Hon'ble High Court granting liberty to the Petitioner to approach the Labour Court for necessary relief. It is submitted that Petitioner has worked continuously without any interruption and completed more than 240 days service. Further, it is submitted that he was orally and abruptly terminated by the 2nd Respondent on 1.4.2007 without giving any notice, notice, pay and retrenchment compensation as contemplated under Section 25 F of Industrial Disputes Act, 1947. It is submitted that the respondents have adopted unfair labour practice by retrenching the petitioner. The Respondent entrusted the work to outsourcing agency. Further, it is submitted that the nature of work which Petitioner was discharging is permanent and perennial nature of work. Consequent to the dismissal of the Petitioner, 2nd Respondent again asked the Petitioner not to attend the office with effect from 29.7.2008. It is submitted that even the 2nd Respondent addressed a letter to the 1st Respondent dated 11.5.2007 giving details of number of days worked by the Petitioner since there is necessity to continue the Petitioner in service as he was working in clerical side and his presence is very much essential for day to day transaction. It is submitted that Petitioner was engaged in processing for writing of all records and registers like processing register, seed receipt forms, IDPs, grower advances, STL QCL samples drawn and record work. It is submitted that Respondent corporation did not assign any reason for retrenching him. Therefore, the order of retrenchment is not only illegal but it is unjust, contrary to law and violative of Article 21 of the Constitution of India. Petitioner submitted that he has worked continuously from 1995 to 1.4.2007 and again from 1.4.2007 to 29.7.2008 continuously. Further, it is submitted that now he is overaged and there is no possibility of getting any alternate employment and Petitioner with great expectations from the Respondent corporation discharged his duties sincerely without giving any room for any complaint. Petitioner made a request for regularization of his services along with other employees and on the basis of their request made by the Petitioner and other employees, he was also called for interview at New Delhi on 14.5.2008 for the post of Lab Attendant. Accordingly, Petitioner attended the interview and the results of interview were not

communicated to him. Further, it is submitted that several juniors of Petitioner namely, S/Sri S. Subbaiah, M.M.Subramanyam and Narayana were retained by respondent. Therefore, the order of retrenchment is illegal and invalid and the same is in violation of Section 25 G&H of the Industrial Disputes Act. It is submitted that the respondents have not prepared any seniority list, which is mandatory under the Andhra Pradesh Industrial Disputes rules. Since the date of his illegal retrenchment Petitioner remained unemployed as he could not secure any alternate employment inspite of his best efforts. Therefore it is prayed, to set aside the oral order of retrenchment dated 1.4.2007 and subsequent order in Lr.No.WPMP11021/2007/NSC-KNL/2008-09/416, dated 30.7. 2008.

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I. Whether the action of the Respondent in terminating the services of the workman Sri S. Abdul Rahim is legal and justified?

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5. **Point No. I**:- The claimant has examined himself as WW1 and in his sworn testimony, WW1 stated that he joined the services of the 2nd Respondent Corporation as a daily wage worker in March, 1995 and continuously worked till he was illegally and orally terminated from the service by the Respondent Corporation w.e.f. 1st April, 2007. Further, WW1 states that he filed a writ petition No.8590 of 2007 before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court granted the interim direction to continue the Petitioner in the service. Therefore, further he was continued in service from 1.4.2007 to 29.7.2008. Hon'ble High Court dismissed his petition vide order dated 11.7.2008 giving liberty to the Petitioner to approach the Labour Court for necessary relief.

6. Further, WW1 states that he was directly appointed as daily wager by the Respondent corporation and he worked under the supervision of the Respondent Corporation and his salaries were paid by the Respondent corporation only. Further, WW1 states that the Respondent corporation used to maintain the attendance register and in every completed year of service claimant has completed more than 240 days of service. Further, WW1 states that in most of the completed years of service, he has put in more than 240 days of service. Witness also states that from the date of joining service, he was working in the clerical side and also used to maintain all the records of processing register, seed receipts forms, IDPs, Growers advances, STL QCL Samples drawn and record work. Further, WW1 states that Respondent corporation has also utilised his services for computer job pertaining to all the sections of the corporation and the work done was of permanent, continuous and perennial nature in the Respondent corporation. Further WW1 states that while orally terminating the services, Respondent corporation has not issued any notice nor gave notice Pay in lieu of the notice. Respondent failed to pay the retrenchment compensation as contemplated under Section 25 F of the Industrial Disputes Act, 1947. Therefore, Petitioner submits that the said oral termination of the Petitioner from service by the Respondent is illegal, unjust, colourable exercise of power, victimization and unfair labour practice and liable to be set aside.

7. Claimant has also filed six documents in evidence and witness WW1 has exhibited these documents as Ex.W1 to W6. WW1 was cross examined at length by the Respondent but nothing contradictory has been elicited in the cross examination of the witness. WW1 in his cross examination has stated that he worked upto the year 2008 and used to get his payment through muster roll basing on attendance register. The witness is shown Xerox copy of muster roll Register showing the number of days, duties attended by the witness. Further, witness stated that he worked for more than 240 days in every calendar year under NSCL. Thus, in his cross examination WW1 has corroborated his statement of chief affidavit and also corroborated his statement with the document in evidence. The documents filed in evidence by the Petitioner are, Ex.W1 is the dismissal order of Petitioner, Ex.W2 is the order passed in WP No.8590/2007 dated 11.7.2008, Ex.W3 is the details of return of daily wage workers sent by Area Manager to Regional Manager, NSCL dated 18.7.2005, that goes to show that the claimant joined the service of the Respondent as a daily wage worker in January, 1995 along with other workmen. Ex.W4, is the letter from Area Manager addressed to the Regional Manager, NSCL dated 11.5.2007, wherein explaining the reasons for engaging daily wage labourers, and the name of the Petitioner appears at Sl.No.2 and further showing the number of days worked by the Petitioner of which details reveals that in the year 1994- 95 Claimant had worked for 87 days ; in the year 1995-96 worked for 327 days, in the year 1996-97 worked for 325 days; in the year 97-98 worked for 316 days, in 1998-99 worked for 312 days, in 1999-2000 worked for 315 days; in 2000-01 worked for 345 days, in 2001-02 worked for 330 days; in 2002-03 worked for 302 days; in 2003-04 worked for 239 days; in 2004-05 worked for 266 days; in 2005-06 worked for 265 days and in 2006-07 had worked for 267 days. The details enumerated in the Ex.W4 corroborate the version of the claimant that he had worked in the Respondent corporation as a daily wage worker and he has worked for 240 days or more continuously not only in each calendar year but also in the calendar year just preceding from the date of his termination i.e., 2006-2007. Further, Ex.W5 is statement showing the details of bonus granted to daily wage workers in the year 2007 and that goes to show that the claimant Sri S. Abdul Rahim was also awarded the bonus for the period from April 2007 to March 2008 for a total of 257 days. Further, it has come in evidence that Petitioner has worked during his engagement as daily wager to the utmost satisfaction of the Respondent corporation. Further, Ex. W6 is the detailed statement of the daily wage persons who has attended for office/ plant work during the Holidays for which they have been paid the wages. These documents further goes to show that claimant and other daily wage workers had also worked on holidays for which they have been paid the wages as per rule.

8. On the other hand, Respondent has filed chief affidavit of MW1, Sri M.V. Sudhakar but despite sufficient opportunity extended to MW1 for cross examination, witness did not turn up. Therefore, the statement of chief affidavit of MW1 in absence of his cross examination cannot be read in evidence and the contention of the Respondent remained unproved in the absence of any corroborating evidence. Further, the documentary evidence filed by the Respondent in support of his contentions also remained unproved in the absence of evidence of any witness. Thus, the oral and documentary evidence produced by the Petitioner in support of his averment remained uncontraverted. However, Respondent in his counter has admitted that claimant Sri S. Abdul Rahim has worked as casual daily wager on need basis in the year 1994 or 1995 and as there was no sufficient work for him in the processing plant used for recording work, he was disengaged. Further, it is contended that Petitioner was not appointed in terms of any rules and regulations and Petitioner cannot claim any benefit as he sought for in the ID. Thus, the Respondent himself admitted the fact that the Petitioner had worked in the Respondent corporation as daily wage worker since 1995. As the Petitioner had worked as daily wager in the Respondent Corporation since 1995 upto 2008, therefore, he is covered under the definition of Workman as defined in Section 2(ss) of the I.D. Act, 1947 and provision of I.D. Act, 1947 equally applies to his case. Now let us examine whether the Petitioner Workman has been terminated in contravention of the provision of section 25 F of the ID Act.

Section 25F provides:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

As per oral and documentary evidence on record, it is undisputedly proved that the Petitioner workman has worked as a daily wager since 1995 up to 2007-08 in Respondent corporation and has almost completed 240 days continuous working days in each calendar year of service. Admittedly, Respondent did not issue any notice to him before his retrenchment from the service and did not paid any wages in lieu of the notice period. Further, no compensation was paid to the Workman for his retrenchment. Thus, under these circumstances, the action of the Respondent in

terminating the services of the Workman without issuing notice or without payment of compensation is found to be in contravention of provision of section 25 F of the I.D. Act, 1947 and the action of the Respondent in the present matter in terminating the services of the Petitioner under these circumstances is neither legal nor justified.

Thus, Point No.I is answered accordingly.

9. **Points No.II & III**: - Since, the finding given at Point No.I, that action of the Respondent in terminating the services of the Petitioner Sri S. Abdul Rahim was found neither legal nor justified. Now, question arises whether claim of the Workman for reinstatement into the service is liable to be allowed. As a matter of fact, the Workman who worked as daily wager in the Respondent corporation, has been terminated from the service in the year 2008 and he has put in 14 years of service in the Respondent organization. Now, he has attained the age of superannuation from the service. Even after putting in 14 years of service in the Respondent corporation and that was without any blemish, the workman has been terminated from service by the Respondent illegally. At this juncture he may not be in a position to find another job as being overaged. Therefore, under these circumstances, appropriate relief to the Workman in this matter would be to grant him compensation for his illegal termination from the service.

In this regard, Hon'ble Apex Court in the case of in the case of BSNL Vs. Bhurumal, Civil Appeal No.10957/2015 have held:-

"It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee." Jagbir Singh has been applied very recently in Telegraph Deptt. V. Santosh Kumar Seal[12], wherein this Court stated: (SCC p.777, para ll) "In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious."

26. Applying the aforesaid principles, let us discuss the present case. We find that the Respondent was working as a daily wager. Moreover, the termination took place more than 11 years ago. No doubt, as per the respondent, he had worked for 15 years. However, the fact remains that no direct evidence for working 15 years has been furnished by the Respondent and most of his documents are relatable to two years,i.e., 2001 and 2002. Therefore, this fact becomes relevant when it comes to giving the relief. Judicial notice can also be taken of the fact that the need of lineman in the telephone department is drastically reduced after the advancement of technology. For all these reasons, we are of the view that ends of justice would be met by granting compensation in lieu of reinstatement."

Similarly, in the present matter, Petitioner has been terminated in violation of provision of Sec.25F of I.D. Act, 1947 and in the facts and circumstances of the case he is entitled for getting compensation. Therefore, in view of the law laid down by the Apex court and in the facts and circumstances of the case the grant of compensation in lieu of the reinstatement would be appropriate relief in the present matter.

10. Now question arises how much compensation would be befitting in the present matter so as to make the good to the Petitioner Workman. As the Petitioner has put in his service in the Respondent corporation and after serving for such a long period he would not be in a position to get any other employment to earn bread for dependent members of his family. Therefore, in such circumstances, In view of facts and circumstances of the case the grant of Rs.2,00,000/- (Rupees two lakhs only) as a compensation to the Workman in lieu of illegal dismissal would be appropriate relief.

Thus, Points No.II & III are answered accordingly.

AWARD

In view of the fore gone discussion and finding given at Points No.I II &III, I am of the considered view that the action of the Respondent M/s. National Seeds Corporation Ltd., in terminating the services of the Petitioner Sri S. Abdul Rahim is held illegal and unjustified as being in violation of provision of Sec.25F of the I.D. Act, 1947. As such, the oral termination order dated 1.4.2007 is hereby set aside. Since he has been terminated from the service

in the year 2007 and long period has been elapsed since then, therefore, the Petitioner is entitled to get a compensation of Rs.2,00,000(Rupees Two Lakhs only) for his illegal termination from service. Thereby the Respondent is directed to pay the compensation amount to Petitioner within two months after receiving copy of this award, with all attendant benefits due to the Petitioner, failing which he has to pay the interest of 12% p.a..

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 30th day of July, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri S. Abdul Rahim	NIL

Documents marked for the Petitioner

Ex.W1: Photostat copy of termination order dt.30.7.2008

Ex.W2: Photostat copy of order passed in WP No.8590/2007

Ex.W3: Photostat copy of returns of the daily wage workers at NSC, Kurnool as on 1.7.2005, dt. 18.7.2005

Ex.W4: Photostat copy of details of No. of days of the daily wage workers, from Area manager, Kurnool to Regional Manager, NSC Ltd., Secunderabad dt.11.5.2007

Ex.W5: Photostat copy of statement showing Bonus of daily wage workers dt.22.5.2008

Ex.W6: Photostat copy of details of Petitioner working on holidays with Respondent No.2

Documents marked for the Respondent

NIL

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1594.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **क्षेत्रीय प्रबंधक, राष्ट्रीय बीज निगम लिमिटेड, लालगुडा, सिकंदराबाद; क्षेत्र प्रबंधक, राष्ट्रीय बीज निगम लिमिटेड, औद्योगिक एस्टेट, कुरनूल,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री पी. खासिम, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट(संदर्भ संख्या L.C.No. 60/2008) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13/08/2024 को प्राप्त हुआ था।

[सं.-एल-42025/07/2024-145-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th August, 2024

S.O. 1594.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. L.C.No. 60/2008) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Regional Manager, National Seeds Corporation Ltd.,Lalaguda, Secunderabad; The Area Manager, National Seeds Corporation Ltd., Industrial Estate, Kurnool, and Shri P. Khasim, Worker,** which was received along with soft copy of the award by the Central Government on 13/08/2024.

[No. L-42025/07/2024-145-IR(DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 30th day of July, 2024

INDUSTRIAL DISPUTE L.C.No. 60/2008

Between:

Sri P. Khasim,

S/o Imam Sahebm

R/o 86/210,

Shyamala Nagar,

Kurnool – 518 001. ..... .Petitioner

AND

1. The Regional Manager,
   National Seeds Corporation Ltd.,
   Lalaguda, Secunderabad -17.
2. The Area Manager,
   National Seeds Corporation Ltd.,
   Shed No.3 & 4, Industrial Estate,
   Kurnool – 518 001.
   Kurnool District. … .Respondents

Appearances:

For the Petitioner : M/s. A.K. Jayaprakash Rao, P. Sudha, M. Govind & Venkatesh Dixit, Advocates

For the Respondent: Sri K. Lakshmi Narasimha, Advocate

AWARD

Sri P. Khasim, who worked as daily wage worker (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents National Seeds Corporation Ltd., seeking for setting aside the oral order of retrenchment dated 1.4.2007 and subsequent order in Lr.No.WPMP11021/2007//NSC-KNL/2008-09/414 dated 30.7.2008 and grant relief of reinstatement into service with full back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The brief facts as averred in the claim statement filed by the Petitioner are as follows**:-

The Petitioner submitted that he has joined the service of the second Respondent corporation as daily wage worker in March, 1994 and worked continuously till he was illegally and orally terminated with effect from 1st April 2007. It is submitted that questioning the said termination order, Petitioner along with other employees, filed WP No.8590/ 2007 and the Hon'ble High Court of Andhra Pradesh granted interim direction to continue them in service. Accordingly, the Petitioner along with other employees continued in service. It is submitted that the WP No.8590/2007 was dismissed by Hon'ble High Court granting liberty to the Petitioner to approach the Labour Court for necessary relief. It is submitted that Petitioner has worked continuously without any interruption and completed more than 240 days service. Further, it is submitted that he was orally and abruptly terminated by the 2nd Respondent on 1.4.2007 without giving any notice, notice, pay and retrenchment compensation as contemplated under Section 25 F of Industrial Disputes Act, 1947. It is submitted that the respondents have adopted unfair labour practice by retrenching the petitioner. The Respondent entrusted the work to outsourcing agency. Further, it is submitted that the nature of work which Petitioner was discharging is permanent and perennial nature of work. Consequent to the dismissal of the Petitioner, 2nd Respondent again asked the Petitioner not to attend the office with effect from 29.7.2008. It is submitted that even the 2nd Respondent addressed a letter to the 1st Respondent dated 11.5.2007 giving details of number of days worked by the Petitioner since there is necessity to continue the Petitioner in service as he was working in clerical side and his presence is very much essential for day to day transaction. It is submitted

that Petitioner was engaged in processing for writing of all records of stores, i.e., ledger maintaining, MT preparation and other marketing statements like cash and credit sales statement of breeder/foundation/ certified seed etc.. the Petitioner also preparing quarterly MT valuation statement, certification material statement, etc.. It is submitted that Respondent corporation did not assign any reason for retrenching him. Therefore, the order of retrenchment is not only illegal but it is unjust, contrary to law and violative of Article 21 of the Constitution of India. Petitioner submitted that he has worked continuously from 1994to 1.4.2007 and again from 1.4.2007 to 29.7.2008 continuously. Further, it is submitted that now he is overaged and there is no possibility of getting any alternate employment and Petitioner with great expectations from the Respondent corporation discharged his duties sincerely without giving any room for any complaint. Petitioner made a request for regularization of his services along with other employees and on the basis of their request made by the Petitioner and other employees, he was also called for interview at New Delhi on 14.5.2008 for the post of Lab Attendant. Accordingly, Petitioner attended the interview and the results of interview were not communicated to him. Further, it is submitted that several juniors of Petitioner namely, S/Sri S. Subbaiah, M.M.Subramanyam and Narayana were retained by respondent. Therefore, the order of retrenchment is illegal and invalid and the same is in violation of Section 25 G&H of the Industrial Disputes Act. It is submitted that the respondents have not prepared any seniority list, which is mandatory under the Andhra Pradesh Industrial Disputes rules. Since the date of his illegal retrenchment Petitioner remained unemployed as he could not secure any alternate employment inspite of his best efforts. Therefore it is prayed, to set aside the oral order of retrenchment dated 1.4.2007 and subsequent order in Lr.No.WPMP11021/2007/NSC-KNL/2008-09/414, dated 30.7. 2008.

3. **Respondent filed counter denying the averments of the Petitioner as under**:-

It is submitted that the Petitioner joined in the corporation as casual daily wage worker on need basis through gate employment in the year 1995. The Petitioner has not been appointed in terms of any rules or regulations of the organization and hence cannot claim any benefit as sought for. Corporation is established with an objective of providing quality seed to the farmers throughout the country and Respondent is engaging seasonal workers on daily wages basis in every season to meet the processing and packing activities undertaken by these schedule unit on actual need basis through gate employment and the corresponding minimum wages are being released to the workers as per the Minimum Wages Act. These labourers were free to work in any other establishment and Respondent have no binding of employee and employer relationship. The headquarters of NSC took policy decision during the month of March, 2006, vide H.O. letterNo:16(9)/NSC-Engg./05-06 to call for tenders for these type of works to discontinue with D/W working system. In response to the above tender notification, tender was given to M/s. Thrupthi Enterprises, No.33. 3rd floor, first main, Mahalakshmi layout, Bangalore-96 vide job order dated 24.1.2007 for the above purpose, valid from 24.1.2007 to 23.1.2008 and made effect from 1.4.2007. The contractor took over the job, specifically in the tender. Therefore, with effect from 1.4.2007, the services of Petitioner including this work dispensed with, as at present, there is no work in the Corporation to reemploy the petitioner. In fact, there was no casual terms and conditions except that they were taken on seasonal basis on D/W only when there is work and that was also dispensed with effect from 1.4. 2007. It is submitted that Petitioner has not made out any case for interference from this court and hence, the ID may be dismissed.

4. On the basis of rival pleadings of both the parties following points emerge for determination in this case:-

I. Whether the action of the Respondent in terminating the services of the workman Sri P. Khasim is legal and justified?

II. Whether the Workman is entitled for reinstatement into the service?

III. To what relief, if any, the Petitioner is entitled?

Findings:-

5. **Point No. I**:- The claimant has examined himself as WW1 and in his sworn testimony, WW1 stated that he joined the services of the 2nd Respondent Corporation as a daily wage worker in March, 1994 and continuously worked till he was illegally and orally terminated from the service by the Respondent Corporation w.e.f. 1st April, 2007. Further, WW1 states that he filed a writ petition No.8590 of 2007 before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court granted the interim direction to continue the Petitioner in the service. Therefore, further he was continued in service from 1.4.2007 to 29.7.2008. Hon'ble High Court dismissed his petition vide order dated 11.7.2008 giving liberty to the Petitioner to approach the Labour Court for necessary relief.

6. Further, WW1 states that he was directly appointed as daily wager by the Respondent corporation and he worked under the supervision of the Respondent Corporation and his salaries were paid by the Respondent corporation only. Further, WW1 states that the Respondent corporation used to maintain the attendance register and in every completed year of service claimant has completed more than 240 days of service. Further, WW1 states that in most of the completed years of service, he has put in more than 240 days of service. Witness also states that from the date of joining service, he was working in the clerical side and also used to maintain all the records of stores, such as ledger maintaining, MT preparation and other marketing statements like cash and credit sales statement, stock and sales statement of breeder/foundation, certified seed, preparation of quarterly MT valuation statement, certification of

material statement. Further, WW1 states that the work done was of permanent, continuous and perennial nature in the Respondent corporation. Further WW1 states that while orally terminating the services, Respondent corporation has not issued any notice nor gave notice Pay in lieu of the notice. Respondent failed to pay the retrenchment compensation as contemplated under Section 25 F of the Industrial Disputes Act, 1947. Therefore, Petitioner submits that the said oral termination of the Petitioner from service by the Respondent is illegal, unjust, colourable exercise of power, victimization and unfair labour practice and liable to be set aside.

7. Claimant has also filed six documents in evidence and witness WW1 has exhibited these documents as Ex.W1 to W6. WW1 was cross examined at length by the Respondent but nothing contradictory has been elicited in the cross examination of the witness. WW1 in his cross examination has stated that he worked upto the year 2008 and used to get his payment through muster roll basing on attendance register. The witness is shown Xerox copy of muster roll Register showing the number of days, duties attended by the witness. Further, witness stated that he worked for more than 240 days in every calendar year under NSCL. Thus, in his cross examination WW1 has corroborated his statement of chief affidavit and also corroborated his statement with the document in evidence. The documents filed in evidence by the Petitioner are, Ex.W1 is the dismissal order of Petitioner, Ex.W2 is the order passed in WP No.8590/2007 dated 11.7.2008, Ex.W3 is the details of return of daily wage workers sent by Area Manager to Regional Manager, NSCL dated 18.7.2005, that goes to show that the claimant joined the service of the Respondent as a daily wage worker in March, 1994along with other workmen. Ex.W4, is the letter from Area Manager addressed to the Regional Manager, NSCL dated 11.5.2007, wherein explaining the reasons for engaging daily wage labourers, and the name of the Petitioner appears at Sl.No.2 and further showing the number of days worked by the Petitioner of which details reveals that in the year 1994- 95 Claimant had worked for 196 days ; in the year 1995-96 worked for 326 days, in the year 1996-97 worked for 327 days; in the year 97-98 worked for 316 days, in 1998-99 worked for 312 days, in 1999-2000 worked for 315 days; in 2000-01 worked for 341 days, in 2001-02 worked for 328 days; in 2002-03 worked for 302 days; in 2003-04 worked for 267 days; in 2004-05 worked for 288 days; in 2005-06 worked for 266 days and in 2006-07 had worked for 267 days. The details enumerated in the Ex.W4 corroborate the version of the claimant that he had worked in the Respondent corporation as a daily wage worker and he has worked for 240 days or more continuously not only in each calendar year but also in the calendar year just preceding from the date of his termination i.e., 2006-2007. Further, Ex.W5 is statement showing the details of bonus granted to daily wage workers in the year 2007 and that goes to show that the claimant Sri P. Khasim was also awarded the bonus for the period from April 2007 to March 2008 for a total of 279 days. Further, it has come in evidence that Petitioner has worked during his engagement as daily wager to the utmost satisfaction of the Respondent corporation. Further, Ex. W6 is the detailed statement of the daily wage persons who has attended for office/ plant work during the Holidays for which they have been paid the wages. These documents further goes to show that claimant and other daily wage workers had also worked on holidays for which they have been paid the wages as per rule.

8. On the other hand, Respondent has filed chief affidavit of MW1, Sri M.V. Sudhakar but despite sufficient opportunity extended to MW1 for cross examination, witness did not turn up. Therefore, the statement of chief affidavit of MW1 in absence of his cross examination cannot be read in evidence and the contention of the Respondent remained unproved in the absence of any corroborating evidence. Further, the documentary evidence filed by the Respondent in support of his contentions also remained unproved in the absence of evidence of any witness. Thus, the oral and documentary evidence produced by the Petitioner in support of his averment remained uncontraverted. However, Respondent in his counter has admitted that claimant Sri P. Khasim has worked as casual daily wager on need basis in the year 1994 or 1994and as there was no sufficient work for him in the processing plant used for recording work, he was disengaged. Further, it is contended that Petitioner was not appointed in terms of any rules and regulations and Petitioner cannot claim any benefit as he sought for in the ID. Thus, the Respondent himself admitted the fact that the Petitioner had worked in the Respondent corporation as daily wage worker since 1995. As the Petitioner had worked as daily wager in the Respondent Corporation since 1994upto 2008, therefore, he is covered under the definition of Workman as defined in Section 2(ss) of the I.D. Act, 1947 and provision of I.D. Act, 1947 equally applies to his case. Now let us examine whether the Petitioner Workman has been terminated in contravention of the provision of section 25 F of the ID Act.

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(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

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Thus, Point No.I is answered accordingly.

9. **Points No.II & III**: - Since, the finding given at Point No.I, that action of the Respondent in terminating the services of the Petitioner Sri P. Khasim was found neither legal nor justified. Now, question arises whether claim of the Workman for reinstatement into the service is liable to be allowed. As a matter of fact, the Workman who worked as daily wager in the Respondent corporation, has been terminated from the service in the year 2008 and he has put in 14 years of service in the Respondent organization. Now, he has attained the age of superannuation from the service. Even after putting in 14 years of service in the Respondent corporation and that was without any blemish, the workman has been terminated from service by the Respondent illegally. At this juncture he may not be in a position to find another job as being overaged. Therefore, under these circumstances, appropriate relief to the Workman in this matter would be to grant him compensation for his illegal termination from the service.

In this regard, Hon'ble Apex Court in the case of in the case of BSNL Vs. Bhurumal, Civil Appeal No.10957/2015 have held:-

"It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee." Jagbir Singh has been applied very recently in Telegraph Deptt. V. Santosh Kumar Seal[12], wherein this Court stated: (SCC p.777, para ll) "In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious."

26. Applying the aforesaid principles, let us discuss the present case. We find that the Respondent was working as a daily wager. Moreover, the termination took place more than 11 years ago. No doubt, as per the respondent, he had worked for 15 years. However, the fact remains that no direct evidence for working 15 years has been furnished by the Respondent and most of his documents are relatable to two years,i.e., 2001 and 2002. Therefore, this fact becomes relevant when it comes to giving the relief. Judicial notice can also be taken of the fact that the need of lineman in the telephone department is drastically reduced after the advancement of technology. For all these reasons, we are of the view that ends of justice would be met by granting compensation in lieu of reinstatement."

Similarly, in the present matter, Petitioner has been terminated in violation of provision of Sec.25F of I.D. Act, 1947 and in the facts and circumstances of the case he is entitled for getting compensation. Therefore, in view of the law laid down by the Apex court and in the facts and circumstances of the case the grant of compensation in lieu of the reinstatement would be appropriate relief in the present matter.

10. Now question arises how much compensation would be befitting in the present matter so as to make the good to the Petitioner Workman. As the Petitioner has put in his service in the Respondent corporation and after serving for such a long period he would not be in a position to get any other employment to earn bread for dependent members of his family. Therefore, in such circumstances, In view of facts and circumstances of the case the grant of Rs.2,00,000/- (Rupees two lakhs only) as a compensation to the Workman in lieu of illegal dismissal would be appropriate relief.

Thus, Points No.II & III are answered accordingly.

AWARD

In view of the fore gone discussion and finding given at Points No.I II &III, I am of the considered view that the action of the Respondent M/s. National Seeds Corporation Ltd., in terminating the services of the Petitioner Sri P. Khasim is held illegal and unjustified as being in violation of provision of Sec.25F of the I.D. Act, 1947. As such, the oral termination order dated 1.4.2007 is hereby set aside. Since he has been terminated from the service in the year 2007 and long period has been elapsed since then, therefore, the Petitioner is entitled to get a compensation of Rs.2,00,000(Rupees Two Lakhs only) for his illegal termination from service. Thereby the Respondent is directed to pay the compensation amount to Petitioner within two months after receiving copy of this award, with all attendant benefits due to the Petitioner, failing which he has to pay the interest of 12% p.a..

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 30th day of July, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri P. Khasim	NIL

Documents marked for the Petitioner

Ex.W1:	Photostat copy of termination order dt.30.7.2008
Ex.W2:	Photostat copy of order passed in WP No.8590/2007
Ex.W3:	Photostat copy of returns of the daily wage workers at NSC, Kurnool as on 1.7.2005, dt. 18.7.2005
Ex.W4:	Photostat copy of details of No. of days of the daily wage workers, from Area manager, Kurnool to Regional Manager, NSC Ltd., Secunderabad dt.11.5.2007
Ex.W5:	Photostat copy of statement showing Bonus of daily wage workers dt.22.5.2008
Ex.W6:	Photostat copy of details of Petitioner working on holidays with Respondent No.2

Documents marked for the Respondent

NIL

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1595.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण **में,केन्द्रीय सरकार** मेसर्स **भारत सरकार टकसाल, मुंबई,**प्रबंधतंत्र के संबद्ध नियोजकों और **टकसाल कामगार सेना, मुंबई,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय 1,मुंबई,पंचाट(संदर्भ संख्या 1/13 of 2019) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.08.2024 को प्राप्त हुआ था।

[सं.-एल-42011/38/2019-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th August, 2024

S.O. 1595.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-1/13 of 2019) of the **Central Government Industrial Tribunal cum Labour Court -1, Mumbai,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **India Government Mint, Mumbai, and Tanksal Kamgar Sena, Mumbai,** which was received along with soft copy of the award by the Central Government on 13.08.2024.

[No. L-42011/38/2019-IR(DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO.1

AT MUMBAI

REFERENCE No CGIT 1/13 of 2019

India Government Mint

Shahid Bhagat Singh Road,

Fort, Mumbai- 400 023 ..First Party

And

Its Workmen

Represented by

Tanksal Kamgar Sena

c/o India Government Mint

Shahid Bhagat Singh Road,

Fort, Mumbai- 400 023 . . Second Party

AWARD

In the present case, a Reference was received from the appropriate Government of India vide letter No. L-42011/382019- IR(DU) dated 04/01/2019 under slause(d) of sub-section (1) and sub-section(2A) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of a dispute, terms of which are as under:

> "***Whether the demand of Tanksal Kamgar Sena for promotion of Sh. V.R. Kale w.e.f. .4.2015 to the post of Asst. Class-I in Annealling Section of India Govt. Mint. Mumbai is fair, legal & justified? If yes, what relief the workman is entitled to?"***

2. In the Reference Order, wherein matter concerning the promotion of one Shri V.R.Kale by the Second Party Union is raised , the Appropriate Government commended the parties, raising the dispute to file their respective Statement of Claim complete with relevant documents, list of witnesses relied upon, with this Tribunal within 15 days of receipt of the reference order and to forward a copy of the said Statement of Claim to the opposite parties involved in the dispute.

3. On 2nd April 2024, the parties appeared. Shri Deepak Funde, General Secretary of Second Party Union submitted an Application dated 23rd February 2024. He informed the Tribunal that Shri V.R.Kale expired on 2nd May 2021 and his family members had no intention to pursue the matter further. The Counsel for the Management Anisa Narayanan has also given her No Objection on the said Application.

4. Hence, in these circumstances ,this Tribunal has no other option except to pass No Dispute Award. NO DISPUTE Award is passed accordingly. A copy of this Award is hereby sent to the Appropriate Government for notification under Section 17 of the Industrial Disputes Act, 1947.

Dated: 01/05/2024

Justice VIKAS KUNVAR SRIVASTAVA (Retd), Presiding Officer

नई दिल्ली, 13 अगस्त, 2024

का.आ. 1596.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.लि. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**121/2012**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **07/08/2024** को प्राप्त हुआ था।

[सं. .एल.-22012/148/2012-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th August, 2024

S.O. 1596.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/121/2012*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **W.C.Ltd.**and their workmen, received by the Central Government on **07*/08/2024.***

[No. L-22012/148/2012 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/121/2012

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Sachin Tiwari

S/o. Late Shri Manohar Prasad Tiwari

R/o. Village Damua-12, near 24-25 Mines

Post-Damua, Tehsil – Junnardev,

Distt.- Chhindwara (M.P.)

Workman

Versus

The Chief General Manager

Western Coalfields Limited, Pathakheda Area

Post Pathakheda, Betul.

Management

JUDGEMENT

(Passed on this 15th day of July-2024)

As per letter dated 26/10/2012 by the Government of India, Ministry of Labour, New Delhi as made this reference to the Tribunal under section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per reference number L-22012/148/2012/IR(CM-II) dt. 26/10/2012. The dispute under reference related to :-

"Whether Shri Sachin Tiwari's services were illegally dismissed vide order dated 22.09.2005. If yes then, what relief he is entitled to ?"

The case was registered on the basis of the reference and notices were sent to the parties. They appeared and filed their respective statements of claim and defence.

The case of the applicant Workman is mainly that he was first appointed by management on October 6th, 1997. During his service, he fell ill and couldn't not recover. He therefore shifted to his family permanently settled in the district Chhindwara on May 19th, 2003. He could not attend his duties and remained sending his medical certificates to management. The management initiated a departmental enquiry against him for the charge of habitual unauthorised and wilful absence. Are departmental enquiry was conducted against him not following the principles of natural Justice and not providing him sufficient opportunity to defend himself. The enquiry officer wrongly recorded the finding of misconduct by way of unauthorised and wilful absence. He was not given sufficient opportunity to have his say on the enquiry report. The disciplinary authority, awarded the punishment without considering his side on the enquiry report, which is disproportionate to the charge..

The case of management, as taken by them in their written statement of defence is mainly that the Workman was appointed as Badli time rated worker. He was required to be present on job for 190 days minimum which was required for his regularization, but due to his poor attendance on job, he could not be regularised. Management further pleaded that his attendance was very poor. His attendance was 166 days in 1998, 70 days in 1999, 108 days in 2000, 86 days in 2001, 92 days in 2002, 27 days in 2003. He was absenting himself without any intimation, permission and application for relief as well without getting any leave sanctioned. His whereabouts were

not known to management from May 19th 2003 to January 20th 2004. He was issued a chargesheet on January 20th, 2004 for the charge of misconduct by habitually and willfully absenting himself. No response was received from a side. Hence, management decided to conduct a regular departmental enquiry wide order dated March 6th, 2004. Notices were sent to the workman in the enquiry but he did not appear. Then, notices for the date of hearing on June 30th, 2005 were published in newspaper, widely circulated in his district and area on June 9th 2005. He did not appear. The enquiry officer held the Workman guilty of misconduct as charged in his enquiry report. The disciplinary authority issued a show cause notice with copy of the enquiry report. No reply was received. Hence the punishment of termination of his services was passed by the disciplinary authority which is proportionate to the charge. The management has thus requested that the reference be answered be answered against the Workman.

Following **preliminary issue** was framed on the basis of pleadings:-

1. ***Whether the departmental enquiry conducted against the Workman is legal and proper ?***

On the basis of evidence produced from both the sides, this issue was decided against the Workman, holding the departmental enquiry just legal and proper wide order dated April 7th 2022. This order is part of this award.

Following **other issues** are framed on April 7th, 2022-

2. ***Whether the charges are proved from the enquiry ?***
3. ***Whether the punishment is disproportionate to the charge ?***

The parties were given opportunity to lead evidence on additional issues. No evidence was adduced by any of the parties.

I have heard argument of Mr. Ashok Srivastava learned Counsel for Workman and Mr. Neeraj Kewat learned Counsel for management and have perused the record.

Issue Number Two:-

The charges against the Workman are as follows –

26.24 - Habitual and wilful absence from duty without any permission and without sufficient cause.

26.30 - absence of 10 days and more without any permission and without any sufficient cause.

The settled principle of law with regard to proof of charges in a departmental enquiry is that the charge need not to be proved beyond reasonable doubt as it is required in criminal trial.

As it comes out from the perusal of enquiry record that the management produced during the enquiry is statement regarding presence and absence of the Workman for the period 2001 to 2003. It also produced the various warnings and punishments awarded to the workmen for his absence without sufficient cause and the attendance register of the work man to substantiate the charge. After going through the documents produced from the side of management during the enquiry, copy of which has been filed by management, the finding of enquiry officer regarding proof of charges is a held justified in law and fact. Issue number two is answered accordingly.

Issue Number Three:-

The settled principle of law with regard to punishment in departmental enquiry is that until and unless the tribunal is satisfied that the punishment is so disproportionate to the charge that the shakes the conscience, it need not be interfered as punishment is in the domain of the disciplinary authority.

Now evaluating the punishment granted in the case in hand, which is of termination of services of the Workman, with the respect of the charge as mentioned above, the certified standing orders provide a punishment of termination of services or dismissal for the charge of habitual and wilful absence without sufficient cause and without intimation to management. Keeping in view the previous service record of the Workman showing that he has been awarded punishment for this charge earlier. Also, and has shown no reform, the punishment of termination of his services in the case in hand, cannot be said to be so disproportionate to shake the conscience of this tribunal. Hence holding the punishment is not a disproportionate to the charge proved, this issue is answered accordingly.

On the basis of findings recorded above, the Workman is held entitled to no relief.

Accordingly,, the reference is answered as follows –

AWARD

Holding the dismissal of the Workman Sachin Tiwari wide order dated September 22nd, 2005, legal and proper, he is held entitled to no relief. No order as to cost.

DATE: 15/07/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 अगस्त, 2024

का.आ. 1597.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरिएंटल बैंक ऑफ कॉमर्स के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (28/2015) प्रकाशित करती है।

[सं. एल-12012/85/2014- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 14th August, 2024

S.O. 1597.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.28/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Oriental Bank of Commerce their workmen.

[No. L-22012/85/2014 – IR (B-II)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

Present: P.K.Srivastava

H.J.S..(Retd)

NO. CGIT/LC/R/28/2015

Hansraj S/o. Dhanlal Ji Tatwade

21/1, Nehru Nagar, Indore (M.P.)

Workman

Versus

Zonal Manager

Oriental Bank of Commerce

Pragati Bhawan, Indira Press Complex

Zone-1, MP Nagar, Bhopal (M.P.)

Management

&

NO. CGIT/LC/RC/02/2015

Hansraj S/o. Dhanlal Ji Tatwade

21/1, Nehru Nagar, Indore (M.P.)

Workman

Versus

Zonal Manager

Oriental Bank of Commerce

Pragati Bhawan, Indira Press Complex

Zone-1, MP Nagar, Bhopal (M.P.)

Management

(J U D G EM E N T)

(Passed on this 23rd day of July-2024)

By letter dated 09/03/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. L-12012/85/2014 IR(B-II) dt. 09/03/2015. The dispute under reference relates to:

"Whether the action of management of Oriental Bank of Commerce in dismissing the services of workman Shri Hansraj S/o. Dhanna Lal Ji Tatwade w.e.f. 25.02.2014 is justified ? If not, what relief the workman is entitled to ?"

After registering a case on the basis of the reference, notices were sent to the parties and were served. The parties appeared and filed their respective Statement of Claim and Defense.

Before the reference was received, the workman filed petition U/S. 2-A (2&3) of the Industrial Disputes Act 1947 with regard to the same dispute. The management also appeared and filed its written statement of defense. This case was registered as RC/02/2015.

Since, the dispute as well the parties were one and the same. Pleadings were also similar, hence both the cases were consolidated and R/28/2015 was made the leading case.

The case of the workman is mainly that he was served with a letter of suspension by the management on 22.09.1988 and First Information Reports at different places were registered against him at different places with respect to theft of the Transfer Payment Orders (TPO). Police filed charge sheets against him before the Court of Judicial Magistrate Bhopal, Judicial Magistrate Indore and Chief Metropolitan Magistrate Mumbai which were registered as Case No.-725/2004, 25522/2009, 601/2010 & 629/2010 respectively U/S. 465/468/419/420 read with Section 34 of IPC. The workman was acquitted in all the cases after trial. After 24 years of suspension, the workman submitted request letters on 05.04.2012 and 21.08.2012 requesting the management to revoke his suspension on the ground that in the charges on the basis of which he was suspended, he was acquitted after trial. The management, instead of revoking his suspension, issued a charge sheet on 07.09.2012 leveling the charge of misconduct on the basis of the same facts and allegations which were leveled against him in the criminal cases mentioned above in which he was acquitted after trial. A departmental enquiry was conducted against him. The Enquiry Officer held the charges of misconduct not proved against the workman. The Disciplinary Authority disagreed with the findings of Enquiry Officer and recorded a finding that charges were proved during the enquiry and the workman was terminated from service without notice. According to the workman, the action of management is unjust, illegal and arbitrary. The workman has prayed that setting aside the impugned punishment order, the workman be held entitled to be reinstated with all back wages and benefits.

Rebutting the case of the workman, **management has taken a case** that the departmental enquiry was lawfully conducted, the Disciplinary Authority also rightly disagreed with the findings of Enquiry Officer and rightly passed the impugned punishment order. Management has prayed that the reference be answered against the workman.

On the basis of pleadings a preliminary issue was framed vide order dated 06.06.2019 as follows:-

"1. ***Whether enquiry conducted by management against workman has been conducted as per law and procedure ?"***

The workman side filed his affidavit as his examination in chief. He was cross examined by management.

Management filed affidavit of its witness as his examination in chief who was cross examined by workman side.

The workman side has filed documents with respect to enquiry which is copy of termination order, charge sheet, suspension order, four other orders, first enquiry report, cross examination in enquiry, report of handwriting expert, statement of management witness in enquiry, enquiry report, disagreement note and office order which are admitted by management. Workman side also filed copies of judgments of Criminal Courts as mentioned above.

Both the sides consented and requested that additional issues also be framed and the case be finally heard and decided. Hence, following additional issues were framed :-

2. Charges proved ?

3. Whether punishment is proportionate to the charges ?

I have heard argument of Mr. Uttam Maheshwari learned Counsel for workman, he filed written argument also which are part of record. Learned Counsel for management Mr. Praveen Chaturvedi has filed written arguments which are part of record. I have perused the records as well the written arguments in the light of oral submissions.

Issue Number One :-

There is no allegation regarding any irregularity or illegality with respect to the Departmental Enquiry made by the workman in his statement of claim and rejoinder. The enquiry papers as well the statements of witnesses for both the sides also do not indicate any illegality in substance or procedure in the enquiry which could prejudice the workman. It is to be kept in mind that the enquiry resulted in favour of the workman.

Learned Counsel for workman has submitted on this point that since the departmental enquiry was initiated after 24 years from the year the alleged misconduct is said to have been committed by the workman, hence the charge-sheet is itself vitiated under law. He has referred to judgment of Hon'ble High Court of M.P. in the case of **Ajeet Narayan vs. Union of India (2017) 1 MPLJ Page 300**. In the referred case, the incident took place 29 years earlier and departmental enquiry was initiated just before the retirement of the workman employee which was held vitiated by Hon'ble High Court.

In para 19.3 of Bipartite Settlement, it is provided that when the allegation which constitute misconduct are being investigated by Police or third party and the workman is acquitted after trial, it shall be open to management to conduct departmental enquiry against the workman with respect to the misconduct. The said paragraph is being reproduced as follows :-

19.3 of Bipartite Settlement :-

(a) When in the opinion of the management an employee has committed an offence, unless he is otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted and in such a case he may also be suspended.

(b) If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 19.6 below.

(c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 19.11 and 19.12 infra relating to discharges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three months' pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so direct.

(d) If he prefers an appeal or revision application against his conviction and is acquitted, in case he had already been dealt with as above and he applies to the management for reconsideration of his case, the management shall review his case and may either reinstate him or proceed against him under the provisions set below in Clauses 19.11 and 19.12 infra relating to discharge, and the provision set out above as to pay, allowances and the period of suspension will apply, the period up-to-date for which full pay and allowances have not been drawn being treated as one of suspension. In the event of the management deciding, after enquiry not to continue him in service, the employee shall be liable only for termination with three months' pay and allowances in lieu of notice, as directed above.

Hence, in the light of this provision, this argument of learned Counsel for workman fails and the case referred can be distinguished on facts.

Hence, in the light of these facts, the Departmental Enquiry is held legally and properly conducted.

Issue Number One is answered accordingly.

Issue Number Two :-

As it appears from record, the charge against the workman was as follows :-

1. ***Doing an act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss which is major misconduct under para 19.5(j) of Bipartite Settlement.***

The basis of the charge was that while posted as a clerk in RTN Branch Indore during the period from 11.07.1985 to 22.09.1988, the workman committed theft of ten blank leaves of Transfer Payment Order (TPO) from the Branch in the month of June/July-1988 and handed over to certain unnamed outsiders. This resulted in fraud/ attempted fraud against the Bank amounting to Rs. 22,58,220.40/- since six of TPO's stolen by the workman were paid/presented at different Branches of Bank, details mentioned in the charge sheet.

It also comes out that the enquiry was first concluded and the Enquiry Officer had found that the charges were proved against the workman. The workman made a representation against this enquiry report on 10.04.2013 on the ground that he was not given opportunity to cross examine the management witnesses with regard to their

statements in the enquiry. The Disciplinary Authority agreed with the representation and reopened the enquiry directing the enquiry officer to grant an opportunity to the workman to cross examine witnesses. After cross examination, the Enquiry Officer submitted his report dated 10.06.2013 holding the charges not proved. It comes out from enquiry papers that according to management the workman signed a paper in which he admitted his misconduct. The workman denied any such paper/document signed by him admitting his misconduct. One witness Babulal Pandeyar, an employee of management, had stated with regard to this paper that it was not in his knowledge that this paper was written or signed by the workman or not but he had heard from other staff that the TPOs were stolen by the workman. A report of handwriting expert was filed by management after comparing the handwriting and signature on this document with the admitted handwriting/signature of the workman. Perusal of the enquiry report submitted by the Enquiry Officer reveals that he had considered the report of handwriting expert, who after comparatively examining the admitted signatures of the workman and the disputed signatures on questioned documents, filed his report stating that they are different. It is to be kept in mind that the management representative himself had filed this expert report and this report was obtained at the instance of management. The Enquiry Officer also considered the statements of the witnesses in the light of their cross examination and found them not supporting the charge/ not reliable. The third evidence which was produced and relied upon by the management in support of charge was recovery of two FDRs of Rs. 25000/- each by Police during investigation from the house of the workman which were in the name of his son and daughter. The management tried to put a case that these FDRs were purchased from the amount generated from the theft of TPOs. The workman put a case during the enquiry that these FDRs were purchased from the amount which his father had received after his retirement and his father had purchased these FDRs from his account, which was believed by Enquiry Officer.

In his disagreement note recorded by the Disciplinary Authority, he had observed that **firstly**, the Enquiry Officer being a Banker having 20 years experience, could well compare the signatures himself and according to the Disciplinary Authority, the admitted signatures of the workman and the disputed signatures were matching according to his experience as a Banker who is used to compare signatures in Bank transactions. Learned Counsel for workman has submitted that handwriting expert is an expert under Section 45 of Indian Evidence Act, who is specially trained in comparison of handwritings and signatures, hence his opinion will carry more weight than that of the Disciplinary Authority who has no special knowledge in this Branch of Science except his experience as a Banker. I find no occasion to disagree with this submission of learned Counsel.

The second point/observation raised by the Disciplinary Authority in his disagreement note is that the workman had admitted his guilt before a witness Prakash Kulkarni who had deposed before the Enquiry Officer that the workman had orally admitted that he had stolen the TPOs before him and this fact was not considered by the Enquiry Officer. In his enquiry report, the Enquiry Officer has mentioned that P.V. Kulkarni had stated that the workman orally accepted his guilt in presence at the residence of the then Branch incumbent S.K. Arora that he had stolen the TPOs on asking the date of acceptance by defense, this witness could not tell the date as it happened 24 years before.

The third observation made by the Disciplinary Authority is that two FDRs of Rs. 25000/- each were recovered by Police from the residence of the workman which were purchased from the income generated from the theft of the TPOs and their use also not considered by the Enquiry Officer. This case of the police that these FDRs were purchased from the income generated from the theft of the TPOs and their use, could not be proved in the criminal trial. The workman had put a defense in this respect that these FDRs were purchased by his father from his retiral benefits in the name of the son and daughter of the workman. It also comes out from perusal of enquiry papers that the father of the workman had retired on 24.11.1985 and the FDRs were purchased on 08.08.1988 i.e., after gape of three years and also that the father of the workman had received total Rs. 41,762/- as his retiral dues. The Disciplinary Authority observed that this amount was lesser than the amount of Rs. 50,000/- (FDRs) and that these FDRs were purchased in 1988 whereas the amount was received and deposited in 1985. During enquiry the workman explained that initially the retirement benefits of father of the workman were invested with the Bank and thereafter the amount was transferred in the name of son and daughter of the workman in shape of FDRs. It also comes out from the enquiry papers and enquiry reports that the account statement of the account of father of the workman were not available due to lapse of time of 24 years. In his disagreement note, the Disciplinary Authority has observed that since father of the workman retired three years before the occurrence of the event which is basis of the charge, this defense of the workman did not stand. In the view of the fact that the defense of the workman that his father had got Rs. 41,762/- as his retiral dues and this amount was deposited by him in his Bank Account as well the fact that these FDRs were purchased from the Bank Account of father, also the fact that this amount would have earned interest on it, rejection of this defense by Disciplinary Authority solely on the ground that the FDRs were purchased after three years does not appeal to reason.

The other observation of Disciplinary Authority that acquittal of the workman from the charges will not be a factor relevant for throwing out the charges because standard of proof in criminal trial and departmental enquiry are different is worth acceptance but there has to be some evidence to show that there was a probability that the misconduct was committed by the workman.

Learned Counsel for workman has referred to another judgment of Hon'ble High Court M.P. in **K.C. Rajwani vs. State of M.P. (2022) SCC Online 1550,** in which the disagreement note of the Disciplinary Authority against finding of Enquiry Officer indicated that it was only on the inference that conclusion of corruption was made out whereas the entire ACR and Vigilance Report did not speak anything against integrity of the Officer, reversal of findings of Enquiry Officer were held based on surmises and conjectures. It was further observed by the Division Bench that when a man was being punished with serious consequences it could not be done on inferences rather it should be based on some material.

In the light of above discussion, the finding of Disciplinary Authority in his disagreement note holding the charges proved does not stand to logic or test of law. Accordingly, holding the finding of the Disciplinary Authority in his disagreement note recorded against law and logic, the charges against the workman are held not proved.

Issue Number Two is answered accordingly.

Issue Number Three :-

In the light of finding recorded on issue number two the order of management in dismissing the services of the workman is held unjustified.

Learned Counsel for management has submitted that punishment is within the domain of Disciplinary Authority and it should not be interfered with until and unless it is shockingly disproportionate to the charge. He further submits in his written arguments that no organization can afford to have an employee whose integrity is doubtful. He has referred to following judgments of Hon'ble the Apex Court in this respect:-

1. ***Chairman and Managing Director United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364.***
2. ***Regional Manager UPSRTC vs. Hoti Lal, (2003) 3 SCC 604.***
3. ***Cholan Roadways vs. G. Thirugyan Sambandam, (2005) 3 SCC 241.***
4. ***Chennai Metropolitan Water Supply Board vs. Murli Babu, (2014) 4 SCC 108.***
5. ***Manoj H. Mishra vs. Union of India, (2013) 6 SCC 313.***
6. ***Ganesh Sant Ram Sirur vs. State Bank of India, (2005) 1 SCC 13.***

All these decisions do not apply in the case in hand because of the fact that the misconduct in the case in hand has been held not proved.

When the misconduct alleged has been held not proved, the proposition of law with respect to relief permissible to the workman has been dealt with by Hon'ble the Apex Court in its judgment in the case ***Deepali Gundu Survasey vs. Kranti Junior Adhyapak Mahavidyalaya reported in 2013 SCC OnLine SC 719 at page 347*** the relevant portions of the judgment are being reproduced as follows:-

This extract is taken from Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184 : 2013 SCC OnLine SC 719 at page 347

25. *The principle laid down in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] was reiterated in P.G.I. of Medical Education & Research v. Raj Kumar [(2001) 2 SCC 54 : 2001 SCC (L&S) 365] . That case makes an interesting reading. The respondent had worked as helper for 11 months and 18 days. The termination of his service was declared by the Labour Court, Chandigarh as retrenchment and was invalidated on the ground of non-compliance with Section 25-F of the Industrial Disputes Act, 1947. As a corollary, the Labour Court held that the respondent was entitled to reinstatement with continuity of service. However, only 60% back wages were awarded. The learned Single Judge of the Punjab and Haryana High Court did not find any error apparent in the award of the Labour Court but ordered payment of full back wages. The two-Judge Bench of this Court noted the guiding principle laid down in Hindustan Tin Works (P) Ltd. [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] and observed : (P.G.I. of Medical Education & Research case [(2001) 2 SCC 54 : 2001 SCC (L&S) 365] , SCC pp. 57-59, paras 8-9, 12 & 14)*

> *"8. While it is true that in the event of failure in compliance with Section 25-F read with Section 25-B of the Industrial Disputes Act, 1947 in the normal course of events the Tribunal is supposed to award the back wages in its entirety but the discretion is left with the Tribunal in the matter of grant of back wages and it is this discretion, which in Hindustan Tin Works (P) Ltd. case [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] this Court has stated must be exercised in a judicial and judicious manner depending upon the facts and circumstances of each case. While, however, recording the guiding principle for the grant of relief of back wages this Court in Hindustan case [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979*

SCC (L&S) 53] , itself reduced the back wages to 75%, the reason being the contextual facts and circumstances of the case under consideration.

9. The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though, however, perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477] .

12. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straightjacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this Court in Hindustan Tin Works (P) Ltd. [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only.

14. The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. In the event, however, the High Court's interference is sought for, there exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable. There ought to be available in the judgment itself a finding about the perversity or the erroneous approach of the Labour Court and it is only upon recording therewith the High Court has the authority to interfere. Unfortunately, the High Court did not feel it expedient to record any reason far less any appreciable reason before denouncing the judgment."

The aforesaid judgment became a benchmark for almost all the subsequent judgments.

26. *In Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya [Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya, (2002) 6 SCC 41 : 2002 SCC (L&S) 818] , the Fifth Industrial Tribunal, West Bengal had found that the finding of guilty recorded in the departmental enquiry was not based on any cogent and reliable evidence and passed an award for reinstatement of the workman with other benefits. The learned Single Judge allowed the writ petition filed by the employer and quashed the award of the Industrial Tribunal. The Division Bench of the High Court reversed the order of the learned Single Judge. This Court issued notice to the respondent limited to the question of back wages. After taking cognizance of the judgments in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] and P.G.I. of Medical Education & Research v. Raj Kumar [(2001) 2 SCC 54 : 2001 SCC (L&S) 365] , the Court observed : (Hindustan Motors Ltd. case [Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya, (2002) 6 SCC 41 : 2002 SCC (L&S) 818] , SCC pp. 45-46, para 16)*

"16. As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or the High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement. The amount already paid as wages or subsistence allowance during the pendency of the various proceedings shall be deducted from the back wages now directed to be paid. The appellant will calculate the amount of back wages as directed herein and pay the same to the respondent within three months, failing which the amount will carry interest at the rate of 9% per annum. The award of the Labour Court which has been confirmed by the Division Bench of the High Court stands modified to this extent. The appeal is disposed of on the above terms. There will be no order as to costs."

(emphasis supplied)

27. *In Indian Railway Construction Co. Ltd. v. Ajay Kumar [(2003) 4 SCC 579 : 2003 SCC (L&S) 528] , this Court was called upon to consider whether the services of the respondent could be terminated by dispensing with the requirement of inquiry enshrined in the Indian Railway Construction Co. Ltd. (Conduct, Discipline and Appeal) Rules, 1981 read with Article 311(2) of the Constitution. The learned Single Judge of the Delhi High Court held that*

there was no legal justification to dispense with the inquiry and ordered reinstatement of the workman with back wages. The Division Bench upheld the order of the learned Single Judge. The two-Judge Bench of this Court referred to the judgments in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] and P.G.I. of Medical Education & Research v. Raj Kumar [(2001) 2 SCC 54 : 2001 SCC (L&S) 365] and held that payment of Rs 15 lakhs in full and final settlement of all claims of the employee will serve the ends of justice.

28. *In M.P. SEB v. Jarina Bee [(2003) 6 SCC 141 : 2003 SCC (L&S) 833] , the two-Judge Bench referred to P.G.I. of Medical Education & Research v. Raj Kumar [(2001) 2 SCC 54 : 2001 SCC (L&S) 365] and held that it is always incumbent upon the Labour Court to decide the question relating to quantum of back wages by considering the evidence produced by the parties.*

29. *In Kendriya Vidyalaya Sangathan v. S.C. Sharma [(2005) 2 SCC 363 : 2005 SCC (L&S) 270] , the Court found that the services of the respondent had been terminated under Rule 19(ii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the charge that he was absconding from duty. The Central Administrative Tribunal held that no material was available with the disciplinary authority which could justify invoking of Rule 19(ii) and the order of dismissal could not have been passed without holding regular inquiry in accordance with the procedure prescribed under the Rules. The Division Bench of the Punjab and Haryana High Court did not accept the appellants' contention that invoking of Rule 19(ii) was justified merely because the respondent did not respond to the notices issued to him and did not offer any explanation for his wilful absence from duty for more than two years. The High Court agreed with the Tribunal and dismissed the writ petition. The High Court further held that even though the respondent employee had not pleaded or produced any evidence that after dismissal from service, he was not gainfully employed, back wages cannot be denied to him. This Court relied upon some of the earlier judgments and held that in view of the respondent's failure to discharge the initial burden to show that he was not gainfully employed, there was ample justification to deny him back wages, more so because he had absconded from duty for a long period of two years.*

31. *In U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, (2006) 1 SCC 479 : 2006 SCC (L&S) 250] , the two-Judge Bench observed : (SCC pp. 486-87, para 22)*

> *"22. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act."*

The Court also reiterated the rule that the workman is required to plead and prima facie prove that he was not gainfully employed during the intervening period.

30. *In Haryana Roadways v. Rudhan Singh [Haryana Roadways v. Rudhan Singh, (2005) 5 SCC 591 : 2005 SCC (L&S) 716] , the three-Judge Bench considered the question whether back wages should be awarded to the workman in each and every case of illegal retrenchment. The factual matrix of that case was that after finding the termination of the respondent's service as illegal, the Industrial Tribunal-cum-Labour Court awarded 50% back wages. The writ petition filed by the appellant was dismissed by the Punjab and Haryana High Court. This Court set aside the award of 50% back wages on the ground that the workman had raised the dispute after a gap of 2 years and 6 months and the Government had made reference after 8 months. The Court then proceeded to observe : (SCC p. 596, para 8)*

> *"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."*

33. *In Novartis India Ltd. v. State of W.B. [(2009) 3 SCC 124 : (2009) 1 SCC (L&S) 595] , the services of the workman were terminated on the charge of not joining the place of transfer. The Labour Court quashed the*

termination of services on the ground of violation of the rules of natural justice and passed an award of reinstatement of the workman with back wages. The learned Single Judge of the High Court dismissed the writ petition filed by the appellant but the letters patent appeal was allowed by the Division Bench on the ground that the State of West Bengal was not the appropriate Government for making the reference. The special leave petition filed by the workman was allowed by this Court and the Division Bench of the High Court was asked to decide the letters patent appeal on merits. In the second round, the Division Bench dismissed the appeal. This Court referred to shift in the approach regarding payment of back wages and observed : (SCC pp. 132-33, paras 21-22)

"21. There can, however, be no doubt whatsoever that there has been a shift in the approach of this Court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination inter alia on the premise that the burden to show that the workman was gainfully employed during interregnum period was on the employer. This Court, in a number of decisions opined that grant of back wages is not automatic. The burden of proof that he remained unemployed would be on the workmen keeping in view the provisions contained in Section 106 of the Evidence Act, 1872. This Court in the matter of grant of back wages has laid down certain guidelines stating that therefor several factors are required to be considered including the nature of appointment; the mode of recruitment; the length of service; and whether the appointment was in consonance with Articles 14 and 16 of the Constitution of India in cases of public employment, etc.

22. It is also trite that for the purpose of grant of back wages, conduct of the workman concerned also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the fact of each case. Back wages are ordinarily to be granted, keeping in view the principles of grant of damages in mind. It cannot be claimed as a matter of right."

***34.** In Metropolitan Transport Corpn. v. V. Venkatesan [(2009) 9 SCC 601 : (2009) 2 SCC (L&S) 719] , the Court noted that after termination of service from the post of conductor, the respondent had acquired Law degree and started practice as an advocate. The Industrial Tribunal declared the termination of the respondent's service by way of removal as void and inoperative on the ground that the Corporation had not applied for approval under Section 33(2)(b) of the Industrial Disputes Act. At one stage, the High Court stayed the order of the Industrial Tribunal but finally dismissed the writ petition. The workman filed application under Section 33-C(2) of the Industrial Disputes Act claiming full back wages. The Labour Court allowed the claim of the respondent to the extent of Rs 6,54,766. The writ petition filed against the order of the Labour Court was dismissed by the learned Single Judge and the appeal was dismissed by the Division Bench. This Court referred to the earlier precedents and observed : (SCC pp. 608-09, paras 19-22)*

"19. First, it may be noticed that in the seventies and eighties, the directions for reinstatement and the payment of full back wages on dismissal order having been found invalid would ordinarily follow as a matter of course. But there is change in the legal approach now.

20. We recently observed in Jagbir Singh v. Haryana State Agriculture Mktg. Board [(2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] that in the recent past there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that the relief of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is held to be in contravention of the prescribed procedure.

21. Secondly, and more importantly, in view of the fact that the respondent was enrolled as an advocate on 12-12-2000 and continued to be so until the date of his reinstatement (15-6-2004), in our thoughtful consideration, he cannot be held to be entitled to full back wages. That the income received by the respondent while pursuing legal profession has to be treated as income from gainful employment does not admit of any doubt. In North-East Karnataka RTC v. M. Nagangouda [(2007) 10 SCC 765 : (2008) 1 SCC (L&S) 718] this Court held that 'gainful employment' would also include self-employment. We respectfully agree.

22. It is difficult to accept the submission of the learned Senior Counsel for the respondent that he had no professional earnings as an advocate and except conducting his own case, the respondent did not appear in any other case. The fact that he resigned from service after 2-3 years of reinstatement and re-engaged himself in legal profession leads us to assume that he had some practice in law after he took sanad on 12-12-2000 until 15-6-2004, otherwise he would not have resigned from the settled job and resumed profession of glorious uncertainties."

***35.** In Jagbir Singh v. Haryana State Agriculture Mktg. Board [(2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] , this Court noted that as on the date of retrenchment, Respondent 1 had worked for less than 11 months and held : (SCC p. 335, paras 14-15)*

"14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been

awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

15. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages."

36. *We may now deal with the judgment in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] in detail. The facts of that case were that the respondent was dismissed from service on the basis of inquiry conducted by the competent authority. The Labour Court held that the inquiry was not fair and proper and permitted the parties to adduce evidence on the charges levelled against the respondent. After considering the evidence, the Labour Court gave benefit of doubt to the respondent and substituted the punishment of dismissal from service with that of stoppage of increments for two years. On an application filed by the respondent, the Labour Court held that the respondent was entitled to reinstatement with full back wages for the period of unemployment. The learned Single Judge dismissed the writ petition and the Division Bench declined to interfere by observing that the employer had wilfully violated the order of the Labour Court. On an application made by the respondent under Section 6(6) of the U.P. Industrial Disputes Act, 1947, the Labour Court amended the award. This Court upheld the power of the Labour Court to amend the award but did not approve the award of full back wages.*

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38. *The propositions which can be culled out from the aforementioned judgments are:*

38.1. *In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*

38.2. *The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*

38.3. *Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a*

negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. *The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.*

38.5. *The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.*

38.6. *In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] .*

38.7. *The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] , [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.*

In his affidavit as his examination in chief, the workman has stated that from the date of his suspension which is 22.09.1988 till date he survived on suspension allowances till the date of termination order in 2014 and since them he is living in starvation. There is no cross examination of workman on his this statement. Management has also not produced any evidence of gainful employment by the workman after his termination. In these circumstances, the workman is held entitled to be reinstated with all back wages and consequential benefits admissible to him from the date of his suspension till date of termination of his services and thereafter till date of his superannuation, deeming him to be in continuous service. He is further held entitled to all post retiral benefits also. He is held further entitled to receive this amount within 30 days from the date of publication of the Award, failing which interest @ of 8% p.a. from the date of Award till payment.

Issue Number three is answered accordingly.

In the light of above discussion and findings, the reference and the petition both are answered as follows:-

A W A R D

Holding ***the action of management of Oriental Bank of Commerce in dismissing the services of workman Shri Hansraj S/o. Dhanna Lal Ji Tatwade w.e.f. 25.02.2014 unjustified, the workman is held entitled to be reinstated with all back wages and benefits admissible to him from the date of his suspension till date of termination of his services and thereafter till date of his superannuation, deeming him to be in continuous service. He is further held entitled to all post retiral benefits also in case he has crossed the age of his superannuation on the date of Award. He is also held entitled to receive this amount within 30 days from the date of publication of the Award, failing which interest @ of 8% p.a. from the date of Award till payment.***

No order as to cost.

DATE:- 23/07/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 अगस्त, 2024

का.आ. 1598.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **यूनियन बैंक ऑफ इंडिया** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (104/2018) प्रकाशित करती है।

[सं. एल-12012/25/2018- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 14th August, 2024

S.O. 1598.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.104/2018*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Union Bank of India their workmen.

[No. L-12012/25/2018 – IR (B-II)

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/104/2018

Present: P.K.Srivastava

H.J.S..(Retd)

General Secretary

Dainik Vetan Bhogi Bank Karmachari

Sangathan, F-1, Tripti Vihar, Opposite

Engineering College, Ujjain (M.P.)

Workman

Versus

Branch Manager

Union Bank of India

Jawra, District Ratlam (M.P.)

Management

A W A R D

(Passed on this 26th day of July-2024.)

As per letter dated 28/11/2018 by the Government of India, Ministry of Labour, New Delhi as made this reference to the Tribunal under section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per reference number L-12012/25/2018/IR(B-II) dt. 28/11/2018. The dispute under reference related to :-

"Whether the demand raised by General Secretary Dainik Vetan Bhogi Bank Karmachari Sangathan that the management of Union Bank of India has committed unfair labour practice in respect of termination of Shri Jitendra Parwar alleged to have work from 23.08.2005 to 03.02.2011 as temporary peon is legal and justified ? If not, to what relief the workman is entitled ?"

After registering the case on the basis of the reference received, Notices were sent to the parties and were duly served on them. The workman union appeared and filed its statement of claim. No written statement of defence was filed by the management Bank. It is further to mention here that vide order dated 20.09.2021 the reference was ordered to proceed ex-parte against management due to their absence inspite of service since last many dates. Management filed an application to recall this order which was dismissed after hearing both the sides vide order dated 30.09.2022.

The management preferred a Misc. Petition No. 5812/2022 which was disposed by Single Bench of Hon'ble High Court of MP. The order dated 30.09.2022 was set aside on cost Rs. 25000/- on following conditions:-

1. ***The respondent (workman union) shall supply a copy of statement of claim as well as documents on the next date fixed by CGIT Jabalpur.***
2. ***The petitioner (management) shall file its written statement to the statement of claim within a period of one month from the date of receipt of statement of claims alongwith documents.***
3. ***The respondent if required may examine his witnesses in the light of defence which may be taken by the petitioner within a period of one month thereafter.***
4. ***The petitioner shall examine all its witnesses within a period of one month after the evidence is closed by respondent.***
5. ***The CGIT shall finally hear and disposed off the case within a period of two months thereafter.***
6. ***It is made clear that neither of the party shall be entitled for any adjournment on whatever ground***.

After, the receipt of the aforesaid order, the management Bank appeared through its learned Counsel and paid the cost imposed Rs. 25000/-. Copies of statement of claims and affidavit as well documents were served on management but they did not file any written statement of defence.

The case of the workman, in short is that the workman was appointed as Peon in Jawra Branch of the Bank under his oral orders on 23.08.2005 as substitute for the Daftari and Cleaner who were transferred to other branch. He worked continuously till 03.02.2011. He was paid his wages initially @ of Rs. 30/- per day which gradually increased to Rs. 100/- per day. He was paid his wages by management in bogus names viz Raju, Shyam, Pawan, Ramlal, Rajesh. He was also engaged for night duty as a Chowkidar of Godown through security service for which he was separately paid Rs. 4000/- per month. Thereafter he was terminated without notice or wages in lieu of one month notice and without payment of retrenchment compensation, in violation of the provision of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act, 1947). He had worked more than 240 days as required under Section 25-B of the Act, 1947. He was not paid wages in the light of Bipartite Settlement which he was entitled to. He requested that holding his termination against law, he be held entitled to reinstatement with back wages and benefits and also entitled to be regularized as a Peon in the bank from the date of his termination.

In evidence, the workman has filed his affidavit. He was cross examined by learned Counsel for management. Management did not file any affidavit of its witness nor did it file any documentary evidence. The workman filed an application on 30.01.2024 directing management to file original documents mentioned in the application which was allowed after hearing. The management did not file any of such documents inspite of order nor did it file any affidavit that the documents were not available. The workman also filed and proved photocopy payment vouchers, photocopy cheque regarding payment of bonus and order of Appellate Authority in RTI which are Ex. W/1 to W/3.

I have heard argument of Mr. Arun Patel, learned Counsel for workman and Mr. Abhinav S. Khardikar learned Counsel for management and have gone through the record. Both the sides have filed written arguments also which are part of record. I have gone through the written argument also.

The reference itself is the issue for determination.

Before entering into any discussion, Section 25-B, 25-F and 25-G of the Act are being reproduced as follows :-

25B. Definition of continuous service.—for the purposes of this Chapter,—

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case. Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25G. Procedure for retrenchment.—

Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

The initial burden to prove its case is on the workman union. The workman has corroborated his allegations in his statement of claim. In his cross examination he admits that he was not issued any appointment letter. He could not tell specific numbers of days, he worked in each year but he worked for more than 240 days in every year. He was called for duty every day. The payment vouchers (photocopy) which are 66 in number and for the period 06.08.2005 to 31.12.2010, show that the workman was paid some amounts on regular basis. The cheque of bonus filed and proved by the workman also corroborates his case that he was working with management, though the number of days he worked cannot be deciphered from this bonus cheque.

It is to be mentioned here that the management was directed to file the original payment vouchers as well the attendance register with respect to the workman but they did not file nor did they file any affidavit that these documents were missing. Hence, adverse inference may be drawn against management that had these documents been produced by management, they would have gone against the management. In the case of **Gauri Shankar Vs. The State of Rajasthan (2015) 12 SCC 754**, referred to from the side of workman, when the documents were withheld by management adverse inference drawn by Tribunal against management was upheld by Hon'ble the Apex Court. When the workman has successfully proved his engagement by management, the burden shifts on management to prove that he did not work for 240 days. The decision of Hon'ble the Apex Court in the case of **Director Fisheries Terminal Division vs. Bhikhu Bhai Megha Ji Bhai Chawda 2010 SC 1236 para 15 & 16** may be referred to in this respect. In case in hand, the management has not even pleaded this fact. Hence, the claim of the workman that he worked continuously for 240 days in every year is held proved. The workman has pleaded and proved that he was not issued any notice nor was he paid any compensation. Accordingly, termination of his services by Bank is held in violation of Section 25-F of the Act.

The next question arises as to which relief the workman is entitled. Learned Counsel for workman has that in the case in hand, the management has adopted unfair labour practice as defined in Section 2(ra) and Para 10 of 5th Schedule which provides that to employ workman as badlis, casuals or temporaries and to continued them as such for year, with the object of depriving them of the status and privileges of permanent workmen, by management is unfair labour practice which is prohibited under the Act. Since, there is nothing on record that the workman was engaged as a casual against any sanctioned vacancy, hence it cannot be said to be a case of unfair labour practice adopted by management. Learned Counsel has referred to following judgments of Hon'ble the Apex Court in support of his argument that the workman be reinstated with back wages and benefits :-

1. **Ranbeer Singh Vs. Executive Engineer PWD (2021) 14 SCC 815.**

2. **BSNL vs. Bhurumal (2014) 7 SCC 177, Para 33 to 35**

This extract is taken from *BSNL v. Bhurumal*, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373 : 2013 SCC OnLine SC 1092 at page 189

> ***33.*** *It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.*
>
> *34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753]]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.*
>
> *35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.*

Learned Counsel for management has submitted that the workman was not appointed against any sanctioned post. His appointment is not as per rules. He did not undergo any recruitment process. He was not appointed by an authority having power to appoint, hence, his reinstatement will not serve the ends of justice. Learned Counsel has also relied on the case of Bhurumal (Supra) in support of his argument.

In its judgment in the case of **Deepali Gundu Surwasey vs. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324**, the following paragraphs are being reproduced as follows:-

"This extract is taken from *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184 : 2013 SCC OnLine SC 719 at page 356

> ***38.*** *The propositions which can be culled out from the aforementioned judgments are:*
>
> ***38.1.*** *In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
>
> ***38.2.*** *The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*

38.3. *Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.*

38.4. *The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.*

38.5. *The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.*

38.6. *In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] .*

38.7. *The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] , [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.*"

Considering the facts and circumstances of the case in hand in the light of aforesaid propositions of law, I am of the considered view that reinstatement of the workman will not be in the interest of justice in the case in hand, rather a lump sum compensation of Rs. 5 lacs in lieu of all his claims payable to the workman by management within 30 days from the date of publication of Award, failing which interest @ of 8% per annum from the date of Award till payment will meet the ends of justice. Reference stands answered accordingly. No order as to cost.

DATE: 26/07/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 अगस्त, 2024

का.आ. 1599.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (16/2006) प्रकाशित करती है।

[सं. एल-12011/178/2005- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 14th August, 2024

S.O. 1599.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.16/2006*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Central Bank of India their workmen.

[No. L-12011/178/2005 – IR (B-II)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/16/2006

Present: P.K.Srivastava

H.J.S..(Retd)

The Regional Secretary,

Madhya Pradesh Central Bank Employee

Association, Main Road, Gulabra,

Chhindwara (M.P.)

Workman

Versus

The Regional Manager,

Central Bank of India,

Chandra Mukhi, Nariman Point

Mumbai (MH)

Management

A W A R D

(Passed on this 29th day of July-2024.)

As per letter dated 28/04/2006 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under section-10 of I.D. Act,(in short the 'Act') 1947 as per reference number L-12011/178/2005/IR(B-II) dt. 28/04/2006. The dispute under reference related to :-

"Whether the action of management of Central Bank of India in not regularizing the service of Shri Netreshwar Rane despite his claim of continuous service as full time daily wage peon since 13.06.1995 is legal and justified ? If not, to what relief the concerned workman is entitled ?"

After registering the case on the basis of the reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

The case of the workman, in short is that he was appointed as Peon in Balaghat branch of the Bank on 13.06.1985 and has been continuously working with management for more than 240 days in every year. The management is a statutory organization and is 'industry' within the Act. He had cleared the examination conducted by Bank for appointment of peon in the year 1993 successfully and the interview also held in 1994 but he was not given appointment on the regular post rather has been continued on daily rated basis. The nature of the job is of permanent

nature. He is performing the same job done by a regularly appointed peon but has not been paid wages prescribed for a regular peon which is against the principal of equal pay for equal work as mention in Article 39 of Constitution of India. The workman is thus entitled to be appointed against regular vacancy, hence the action of management in not appointing him against regular vacancy and not granting him wages payable to regularly appointed peon is illegal, arbitrary and unjust. The workman has thus requested that the reference be answered in his favour holding him entitled to be regularized as a peon with retrospective effect and entitled to get regular pay scale with all consequential benefits.

The case of the management, inter alia, is that the alleged workman was neither employed as permanent employee nor attained permanent status. He worked as a casual worker who was required to work as and when required by Bank. He never completed 240 days in continuous service of Bank in any year and is not entitled to get permanent status on this ground. It is further the case of management under the Circular dated 12.03.1991 (Circular no.-CO90-91/622), those working as casual / temporary employees with the Bank for a period mentioned in the Circular were given a chance to appear in the written test conducted by Bank for appointment against vacancy of peon and other equivalent posts namely Sweeper etc. This written test was conducted on 05.12.1993. The successful candidates were interviewed on 18.03.1994. The workman appeared in the written test and interview and he was empanelled in the list of daily wagers for appointment against vacancies of peon. It was further made clear by management vide its letter dated 10.01.1996 to all such candidates that this panel is not for offer of appointment rather it is a list for empanelment of workman in subordinate staff category. The management has further taken a case that there was no vacancy of peon in general category, hence the workman could not be offered appointment as peon. Another examination was also conducted by management for this purpose in 2013 but the workman did not participate in the said examination. According to management the workman had preferred a W.P. No.-13685/05 which was dismissed after hearing. Management has requested that the reference be answered against the workman.

In evidence, the workman filed his affidavit as his examination in chief, he was cross examined by management. He proved documents Ex. W/1 to W/11, to be referred to as and when required. Management has file affidavit of its witness who has been cross examined by the workman side.

I have heard argument of learned Counsel Mr. K.B. Singh for workman and Ms. Sushma Pandey for management. I have gone through the record.

On perusal of record in the light of rival arguments, following issues come up for determination.

1. **Whether the workman was entitled to be appointed as peon without interview and written test because he had completed 240 days and more in every year from 01.01.1982 to 31.12.1990 in the light of Circular of 1991?**
2. **Whether the action of management in not appointing the workman on the basis of list of empanelled candidates prepared on the basis of written test and interview conducted by management in the light of its Circular dated 12.03.1991 is justified in law ?**
3. **Relief.**

Issue No.-1:-

The relevant portion of the Circular of 1991 is been reproduced as follows:-

3.1 Temporary employees who have put in 240 days of temporary service in any continuous period of 12 months after 01.01.1982 to 31.12.1990 will be considered for absorption in the immediate available vacancies **without any test and interview**.

3.2 Qualification and age norms will not be insisted for them.

3.3 Such candidates will be considered for appointment before initiating any recruitment process.

3.4 …….

3.5 ……

3.6 ……

3.7 ……

3.8 ……

4. **Employees who have worked for 180 days from 01.01.1987 to 24.12.1990**.

5. Employees who have worked for 60 days in any one year from 01.01.1987 to 24.12.1990.

Temporary employees who have worked for 180 days during the period from 01.01.1987 to 24.12.1990 and are registered with Employment exchange but have not been sponsored will be called to appear in the immediate sub staff recruitment test as and when held.

The case of the workman is that he was first appointed on 13.06.1985 and has completed more than 240 days in every year in continuous employment. Management does not dispute this allegations but pleads that he never completed 240 days in any year. The workman has corroborated his allegation in his affidavit. He has not been cross examined by management on his this statement. On the other hand, the management witness nowhere states in his affidavit as his examination in chief that the workman did not work continuously for 240 days in any year. This witness states that on the basis of the Circular of 12.03.1991 those daily wagers who had worked continuously for 240 days were given an opportunity to appear in the written test conducted by management on 05.12.1993 for appointment of such workers against regular vacancies of peons.

In the light of these statements, the continuous employment of the workman for 240 days and more, since 1982 to 1990 is held proved. Since, the continuous employment of the workman as stated above, has been held proved, the workman was covered in para 3.1 to 3.3 of the Circular of 1991 and is held to be entitled for consideration for appointment against regular vacancies of peon without any written test or interview. Non consideration of his claim for appointment against regular vacancies of peon without any written test or interview. In the light of the aforesaid Circular is held arbitrary and illegal on the part of management.

Issue no.-1 is answered accordingly.

Issue No.-2 :-

Undisputed is the fact that the workman appeared in the examination held in the light of Circular of 1991 above referred, cleared this examination and was called for interview conducted on 08.03.1994. He appeared in the interview and was empanelled in the list of candidates to be appointed as peons. It was made clear by the Bank vide letter dated 10.01.2006 that this list is only a list and does not entitle any person in the list to be appointed. Since there was no vacancy in the general category to which the workman belonged, hence he was not appointed. The management was under legal obligation to show before this Tribunal by positive evidence the total category wise sanctioned post of peons in the zone and also total category wise vacancies on the date of notification /Circular of 1991 and thereafter till recruitment notification of 2013. They did not do so hence it can be inferred that management concealed this fact because disclosure of this fact would have militated against the claim of no vacancy in general category as made by management.

The question arises here that if there was no vacancy in general category with respect to the peons, what would be the life of the list prepared as above i.e., to say till when the list shall be alive. Learned Counsel for management has submitted that vacancies for the peon in the general category arose in 2013 and a fresh recruitment notification for such employees was released in which the workman did not appear. Hence, according to her, the list will come to end on the date of recruitment notification of 2013.

The circular of 1991 para 8 is being reproduced as follows:-

"***The list of successful candidates in the recruitment test will be empanelled in the order of merit and temporary employees who have worked for 160 days/60 days will have preference overall other successful candidates, if any. This panel will remain operative till it is fully exhausted."***

Since, it is provided in the Circular of 1991 itself that the panel shall remain operative till it is fully exhausted, hence argument of learned Counsel for management that the list became dead on the date of recruitment notification of 2013 cannot be accepted. The management was duty bound to exhaust the list **first**, before considering any appointment on the basis of recruitment notification of 2013 and by not doing so the management is held to have acted arbitrarily against law.

Issue No.-2 is answered accordingly.

Issue No.-3 :-

Learned Counsel for management has referred to judgment of Hon'ble High Court of M.P. in W.P. No.-13685/2005 and has submitted that in the light of this judgment, the workman is not entitled to any relief. I have perused the judgment which discloses that after taking into consideration the fact the same dispute was referred to this Tribunal after filing of the Petition, the writ petition was not tenable as collateral proceedings and the writ was dismissed with liberty to the petitioner workman to prosecute his claim before this Tribunal. In the light of these facts, this argument of learned Counsel is merit less.

In the light of findings on issue no.-1 & 2, the workman is held entitled to be appointed against the date of first available vacancy of peons in Raipur Zone of the Bank in general category from the date of release of list after recruitment process held under the Circular of 1991 till the date the whole list is exhausted. He is entitled to all back

wages and consequential benefits treating him appointed from the date of first available vacancy of peons in Raipur Zone of the Bank in general category as well as post retiral benefits treating him to be in continuous regular service from that date. He is also held entitled to litigation cost fixed at Rs. 30000/- from management Bank. Furthermore, he is held entitled to get all the aforesaid benefits within 30 days from the date of Award, failing which interest @ of 8% from the date of Award till payment.

Issue No.-3 is answered accordingly.

A W A R D

Holding, the action of management of Central Bank of India in not regularizing the service of Shri Netreshwar Rane despite his claim of continuous service as full time daily wage peon illegal and unjustified, the workman is held entitled to be appointed against the date of first available vacancy of peons in Raipur Zone of the Bank in general category from the date of release of list after recruitment process held under the Circular of 1991 till the date the whole list is exhausted. He is entitled to all back wages and consequential benefits treating him appointed from the date of first available vacancy of peons in Raipur Zone of the Bank in general category as well as post retiral benefits treating him to be in continuous regular service from that date. He is also held entitled to litigation cost fixed at Rs. 30000/- from management Bank. Furthermore, he is held entitled to get all the aforesaid benefits within 30 days from the date of Award, failing which interest @ of 8% from the date of Award till payment.

DATE: 29/07/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 अगस्त, 2024

का.आ. 1600.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (21/2013) प्रकाशित करती है।

[सं. एल-12025/01/2024- आई आर (बी-I)-211]

सलोनी, उप निदेशक

New Delhi, the 14th August, 2024

S.O. 1600.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.21/2013*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India their workmen.

[No. L-12025/01/2024 – IR (B-I)-211]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/21/2013

Present: P.K.Srivastava

H.J.S..(Retd)

Anil Kashyap

S/o. Ramkumar Kashyap

Peepal Ped ke pass, Sindhi Kirana

Dukan ke samne, Madhuban, Nariyal Kothi

Dayalband, Bilaspur (C.G.)

Workman

Versus

1. State Bank of India

Through Deputy General Manager

Zonal Office – 27 Kholi, Bilaspur (C.G.)

2. State Bank of India

Through – Regional Manager

Nehru Chowk, Bilaspur (C.G.)

3. State Bank of India

Through – Branch Manager

Main Branch, Bilaspur (C.G.)

Management

A W A R D

(Passed on this 16th day of July-2024.)

The workman has filed the petition U/S. 2(A)(2&3) of Industrial Disputes Act 1947 as amended by Act of 2010 against the wrongful termination of his services by the management bank.

After registering a case on the basis of petition, notices were sent to the management. They appeared and filed their Written Statement of Defense.

The case of the workman, in short, is that he was appointed by management in November 1997, he remained in employment of management till 10.12.2011 when his services were terminated without notice or compensation, which is in violation of Section 25(F) & 25(G) of the Industrial Disputes Act 1947 (in short the 'Act'). The other persons, who were employed with him were regularized. He was not paid wages and salary which was entitled to be paid as a temporary employee which is unfair labour practice adopted by management. The workman has prayed that he be held entitled to be reinstated with back wages and benefits holding his termination against law.

The management appeared and filed written statement in the case. **The case of the management**, inter alia, is that the alleged workman was neither employed as permanent employee nor attained permanent status. He never worked continuously for 240 days in any year. He was paid minimum wages for his workman. That, in fact he used to supply Water Coolers on rental basis, therefore he was called in the Branch to do electrical works whenever it was required and Main Branch at Bilaspur used to take Water Coolers on rent from him for which he was paid. It is further the case of management that the benefits in the bipartite settlement are available only to regular staff and not to the daily wager.

In evidence, the workman filed his affidavit. He was cross examined by management, he has produced and proved payment vouchers Ex. W/1 and copy of passbook, cheques and receipts, certificate issued by Chief Manager, copy of legal notice, copy of representation Ex. W/2 to W/5.

The management has field affidavit of its witness who has been cross examined by workman side.

I have heard argument of learned Counsel Mr. Rakesh Soni for workman and Mr. Pranay Chaubey for management. I have gone through the record as well. The workman has filed written arguments, which is part of record. I have perused the written arguments.

After perusal of record in the light of arguments, the reference itself is the **issue** in this case:-

The burden to prove that the workman was appointed against a sanctioned vacancy following recruitment process by a competent authority is on him. The case of the workman was that he was appointed on the post of messenger which was permanent vacancy and continued as messenger till the date of termination of his engagement, whereas according to management he was a daily wager casual labour who was engaged intermittently but never in continuous employment for 240 days in any year and he was paid minimum wages fixed by Government for daily wagers.

In his affidavit as his examination in chief, the workman has corroborated his allegations is taken in statement of claim. He further stated that Radheshyam in Rajkishore Branch, Kalicharan in Railway Branch and many others mentioned in para 2 of his affidavit were still working though appointed with them him. He also stated that he was paid his wages by Bank from November 1997 to December 2011 which are mentioned in Cash Book, Petty Cash Register, Charges Register, Gate Pass Register, Post Office Receipts, the originals available with the Bank but not produced inspite of order. He has denied the case of management that he had given Coolers and Generator to Bank on rent and also that he was called for electric repairs by the Bank. In his cross examination, he states that he was paid his monthly wages through vouchers and cheques. He denied that he was called for work as and when required.

The management witness has corroborated the case of management as taken in their written statement of defence. In his cross examination, this witness states that he was not appointed by Bank, in fact he had given Coolers and Generator to the Branch and to the Main Branch on rent for which he was paid. He further stated that the workman never completed 240 days in employment.

A comparative analysis of evidence of both the sides, as mentioned above reveals that the proved vouchers, cheques and other documents Ex. W/1 to W/5 are in bulk. They contain stamp of the Bank and signature of Bank Officials. Since, the evidence, particularly the statement of account of the workman show a pattern that there has been a transfer of definite amount in every month from the Bank, it strengthens the case of the workman regarding his continuous engagement. Since, the workman could not establish that he followed any recruitment process, it cannot be said that he was regularly appointed against any regular vacancy. As regards, the payments regarding rent of Coolers etc., the photocopy bills filed by management vide application dated 22.06.2017 have not been proved by management, hence, they cannot be read in evidence.

From the above discussion, the workman is held to have successfully proved his continuous engagement from November 1997 to 10.12.2011 as a daily wager. Since, it is not disputed that no notice or compensation was granted to him before his disengagement, his termination is held in violation of Section 25-G & 25-F of the Act.

As regards the relief admissible to the workman, the argument of learned Counsel for workman is that by working for as many as twelve years continuously with the Bank the workman had acquired permanent status. Hence, he is entitled to be reinstated with back wages and consequential benefits. Learned Counsel has referred to following judgments in this respect:-

1. ***Tapas Kumar Paul Vs. BSNL (2014) 15 SCC 313 – para 4 to 6 and para 11 to 13.***
2. ***Sanjay Kumar Vs. Chief Executive Officer (2010) 3 MPLJ 457***

Management has referred to following judgments :-

1. ***Mohammad Ali Vs. State of H.P., C.A. No. 3803/2018 arising out of SLP (C) 19160/2015*** (granting compensation to a casual worker when his termination was held in violation of Industrial Disputes Act 1947, was upheld by Hon'ble Supreme Court)**.**
2. ***State of Uttarakhand Vs. Smt. Sureshwati, C.A. No. 142/2021 arising out of SLP (C) 9864/2020*** (can be distinguished on facts).

The relevant paragraphs of the case of Tapas Kumar (Supra) are being reproduced as follows:-

This extract is taken from Tapash Kumar Paul v. BSNL, (2014) 15 SCC 313 : (2015) 3 SCC (L&S) 619 : 2014 SCC OnLine SC 1162 at page 315

4. *It is no doubt true that a court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds viz. (i) where the industry is closed; (ii) where the employee has superannuated or is going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated; and/or (iv) when he has lost confidence of the Management to discharge duties. What is sought to be emphasised is that there may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation, but that has to be supported by some legal and justifiable reasons indicating why the order of reinstatement should be allowed to be substituted by award of compensation.*

10. *However, it is pertinent to mention that the recent decision of this Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya [Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184] took a contrary view. The Court in that case, opined as under : (SCC pp. 344-47, paras 22-24)*

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the

employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

23. A somewhat similar issue was considered by a three-Judge Bench in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] in the context of termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary for utilisation of full installed capacity by the petitioner. The dispute raised by the employees resulted in award of reinstatement with full back wages. This Court examined the issue at length and held : (SCC pp. 85-86, paras 9 & 11)

'9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

11. In the very nature of things there cannot be a straitjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular….'

After enunciating the abovenoted principles, this Court took cognizance of the appellant's plea that the company is suffering loss and, therefore, the workmen should make some sacrifice and modified the award of full back wages by directing that the workmen shall be entitled to 75% of the back wages.

24. Another three-Judge Bench considered the same issue in Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] and observed : (SCC p. 447, para 6)

"6. ... Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-á-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.'"

In the case in hand, the workman has been found to have been appointed not by following recruitment process and against sanctioned vacancy. His status has been that of casual worker. It is true that he has put in a long tenure with the management Bank but only this does not make him entitled to be reinstated/granted permanent status. It is to be kept in mind that even he is reinstated, he will be reinstated as a daily wager casual labour, who can be retrenched by management at any time following procedure. In view of these facts, a lump sum compensation to the workman in lieu of all his claims will meet the ends of justice. **Keeping in mind all the facts as mentioned above, a lump sum compensation of Rs. 5 lacs in lieu of all his claims will meet the ends of justice, which he is held entitled to receive from management Bank within 30 days from the date of the publication of the Award, failing which interest @ of 8% per annum from the date of Award till payment. The Petition stands disposed accordingly.**

DATE: 16/07/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 अगस्त, 2024

का.आ. 1601.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (22/2013) प्रकाशित करती है।

[सं. एल-12025/01/2024- आई आर (बी-I)-212]

सलोनी, उप निदेशक

New Delhi, the 14th August, 2024

S.O. 1601.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.22/2013*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India their workmen.

[No. L-12025/01/2024 – IR (B-I)-212]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/22/2013

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Rajesh Kumar Kashyap

S/o. Shri Ramkumar Kashyap

Madhuban, Nariyal Kothi,

Dayalband, Bilaspur (C.G.)

Workman

Versus

1. **State Bank of India**
   Through Deputy General Manager
   Zonal Office – 27 Kholi, Bilaspur (C.G.)
2. **State Bank of India**
   Through – Regional Manager
   Nehru Chowk, Bilaspur (C.G.)
3. **State Bank of India**
   Through – Branch Manager
   Main Branch, Bilaspur (C.G.)

Management

A W A R D

(Passed on this 18th day of July-2024.)

The workman has filed the petition U/S. 2(A)(2&3) of Industrial Disputes Act 1947 as amended by Act of 2010 against the wrongful termination of his services by the management bank.

After registering a case on the basis of petition, notices were sent to the management. They appeared and filed their Written Statement of Defense.

The case of the workman, in short, is that he was appointed by management on 01.01.2001, he remained in employment of management till 01.10.2012 when his services terminated without notice or compensation, which is in violation of Section 25(F) & 25(G) of the Industrial Disputes Act 1947 (in short the 'Act'). The other persons, who were employed with him were regularized. He was not paid wages and salary which was entitled to be paid as a temporary employee which is unfair labour practice adopted by management. The workman has prayed that he be held entitled to be reinstated with back wages and benefits holding his termination against law.

The management appeared and filed written statement in the case. **The case of the management**, inter alia, is that the alleged workman was neither employed as permanent employee nor attained permanent status. He worked as a casual labour only when work was available in the branch on intermittent basis and was paid for it. He never worked continuously for 240 days in any year. He was paid minimum wages for his workman. It is further the case of management that the benefits in the bipartite settlement are available only to regular staff and not to the daily wager.

In evidence, the workman filed his affidavit. He was cross examined by management, he has produced and proved payment vouchers Ex. W/1 and copy of passbook, cheques and receipts Ex. W/2 and W/3. He has also proved the reimbursement paid to him for his expenses in going to post office from Bank for work.

The management has field affidavit of its witness who has been cross examined by workman side.

I have heard argument of learned Counsel Mr. Rakesh Soni for workman and Mr. Pranay Chaubey for management. I have gone through the record as well. The workman has filed written arguments, which is part of record. I have perused the written arguments.

After perusal of record in the light of arguments, the reference itself is the **issue** in this case:-

The burden to prove that the workman was appointed against a sanctioned vacancy following recruitment process by a competent authority is on him. The case of the workman was that he was appointed on the post of messenger which was permanent vacancy and continued as messenger till the date of termination of his engagement, whereas according to management he was a daily wager casual labour who was engaged intermittently but never in continuous employment for 240 days in any year and he was paid minimum wages fixed by Government for daily wagers.

In his affidavit as his examination in chief, the workman has corroborated his allegations is taken in statement of claim. He further stated that Radheshyam in Rajkishore Branch, Kalicharan in Railway Branch and many others mentioned in para 2 of his affidavit were still working though appointed with them him. He also stated that he was paid his wages by Bank from January 2001 to October 2012 which are mentioned in Cash Bbook, Petty Cash

Register, Charges Register, Gate Pass Register, Post Office Receipts, the originals available with the Bank but not produced inspite of order. He has proved photocopy of some vouchers and cheques, pay slips, copy of his passbook, receipts, which have been marked Exhibits W/1 to W/4. In his cross examination, he states that he was paid his monthly wages through vouchers and cheques. He also stated that he had sought copies of these documents by way of filing application in RTI Act which was refused. He denied that he was called for work as and when required.

The management witness has corroborated the case of management as taken in their written statement of defence. In his cross examination, this witness states that he was first appointed in 2000, the attendance register for the period the workman claims to have been appointed did not contain the name of the workman. No payment vouchers and bill was available with regard to the workman. He further stated that the workman never completed 240 days in employment.

A comparative analysis of evidence of both the sides, as mentioned above reveals that the proved vouchers, cheques and other documents Ex. W/1 to W/4 are in bulk. They contains stamp of the Bank and signature of Bank Officials. It is not case of the management that these documents are forged. The management witness also does not say so. Since, the evidence, particularly the statement of account of the workman show a pattern that there has been a transfer of definite amount in every month from the Bank, it strengthens the case of the workman regarding his continuous engagement. Since, the workman could not establish that he followed any recruitment process, it cannot be said that he was regularly appointed against any regular vacancy.

From the above discussion, the workman is held to have successfully proved his continuous engagement from 01.01.2001 to 01.10.2012 as a daily wager. Since, it is not disputed that no notice or compensation was granted to him before his disengagement, his termination is held in violation of Section 25-G & 25-F of the Act.

As regards the relief admissible to the workman, the argument of learned Counsel for workman is that by working for as many as twelve years continuously with the Bank the workman had acquired permanent status. Hence, he is entitled to be reinstated with back wages and consequential benefits. Learned Counsel has referred to following judgments in this respect:-

1. ***Tapas Kumar Paul Vs. BSNL (2014) 15 SCC 313 – para 4 to 6 and para 11 to 13.***
2. ***Sanjay Kumar Vs. Chief Executive Officer (2010) 3 MPLJ 457***

Management has referred to following judgments :-

1. ***Mohammad Ali Vs. State of H.P., C.A. No. 3803/2018 arising out of SLP (C) 19160/2015*** (granting compensation to a casual worker when his termination was held in violation of Industrial Disputes Act 1947, was upheld by Hon'ble Supreme Court)**.**
2. ***State of Uttarakhand Vs. Smt. Sureshwati, C.A. No. 142/2021 arising out of SLP (C) 9864/2020*** (can be distinguished on facts).

The relevant paragraphs of the case of Tapas Kumar (Supra) are being reproduced as follows:-

This extract is taken from Tapash Kumar Paul v. BSNL, (2014) 15 SCC 313 : (2015) 3 SCC (L&S) 619 : 2014 SCC OnLine SC 1162 at page 315

4. *It is no doubt true that a court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds viz. (i) where the industry is closed; (ii) where the employee has superannuated or is going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated; and/or (iv) when he has lost confidence of the Management to discharge duties. What is sought to be emphasised is that there may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation, but that has to be supported by some legal and justifiable reasons indicating why the order of reinstatement should be allowed to be substituted by award of compensation.*

10. *However, it is pertinent to mention that the recent decision of this Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya [Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184] took a contrary view. The Court in that case, opined as under : (SCC pp. 344-47, paras 22-24)*

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities.

They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

23. A somewhat similar issue was considered by a three-Judge Bench in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] in the context of termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary for utilisation of full installed capacity by the petitioner. The dispute raised by the employees resulted in award of reinstatement with full back wages. This Court examined the issue at length and held : (SCC pp. 85-86, paras 9 & 11)

'9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

11. In the very nature of things there cannot be a straitjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular….'

After enunciating the abovenoted principles, this Court took cognizance of the appellant's plea that the company is suffering loss and, therefore, the workmen should make some sacrifice and modified the award of full back wages by directing that the workmen shall be entitled to 75% of the back wages.

24. Another three-Judge Bench considered the same issue in Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] and observed : (SCC p. 447, para 6)

"6. ... Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-á-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.'"

In the case in hand, the workman has been found to have been appointed not by following recruitment process and against sanctioned vacancy. His status has been that of casual worker. It is true that he has put in a long tenure with the management Bank but only this does not make him entitled to be reinstated/granted permanent status. It is to be kept in mind that even he is reinstated, he will be reinstated as a daily wager casual labour, who can be retrenched by management at any time following procedure. In view of these facts, a lump sum compensation to the workman in lieu of all his claims will meet the ends of justice. **Keeping in mind all the facts as mentioned above, a lump sum compensation of Rs. 5 lacs in lieu of all his claims will meet the ends of justice, which he is held entitled to receive from management Bank within 30 days from the date of the publication of the Award, failing which interest @ of 8% per annum from the date of Award till payment. The Petition stands disposed accordingly.**

DATE: 18/07/2024

P. K. SRIVASTAVA, Presiding Officer

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